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MAGNA CHARTA

THE GREAT CHARTER OF LIBERTIES OF KING JOHN,
GRANTED AT RUNNYMEDE, JUNE 15, A. D.
1215, IN THE SEVENTEENTH YEAR
OF HIS REIGN.

John, by the grace of God, King of England, Lord of Ireland, Duke of Normandy, and Aquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his Lieges, Greeting: Know ye, that we, in the presence of God, and for the salvation of our own soul, and the souls of our ancestors, and of our heirs, and unto the honor of God and the advancement of Holy Church, and amendment of our realm, by advice of our venerable Fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church, Henry, Archbishop of Dublin, William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, Bishops; of Master Pandulph, Sub-Deacon and Familiar of our Lord the Pope, Brother Aymeric, Master of the Knights Templar in England; and of the Noble Persons, William Mareschal, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundell, Alan de Galloway, Constable of Scotland, Warin Fitz-Gerald, Peter Fitz-Herbert, and Hubert de Burgh, Seneschal of Poitou, Hugh de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip of Albany, Robert de Roppel, John Mareschal, John Fitz-Hugh, and others, our liegemen, have in the first place, granted to God, and by this our present Charter confirmed, for us and our heirs forever:

1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we will have them so observed, that it may appear thence, that the freedom of elections which is reckoned chief and indispensable to the English Church, and which we granted and confirmed by our charter, and obtained the confirmation of the same from our Lord Pope Innocent III., before the discord between us and our barons, was granted of mere free will; which charter we shall observe, and we do will it to be faithfully observed by our heirs forever.

2. We have also granted to all the freemen of our kingdom, for us and for our heirs forever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs, forever: If any of our earls, or barons or others, who hold of us in chief by

military service, shall die, and at the time of his death, his heirs shall be of full age, and owes a relief; he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heiress of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

3. But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

4. The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issue to us, or to him to whom we shall assign them; and if we sell or give to anyone the custody of any such lands, and he therein makes destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

5. But the keeper, so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall deliver to the heir when he comes of full age, his whole land, stocked with ploughs and carriages, according as the time of wainage shall require, and the issue of the land can reasonably bear.

6. His heirs shall be married without disparagement, and so that before matrimony shall be contracted, those who are near in blood to the heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which time her dower shall be assigned.

8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord whom she holds, if she holds of another.

9. Neither we nor our bailiffs will seize any land or rent for any debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor has sufficient to pay the debt; and if the principal

debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rent of the debtor, until they shall be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

10. If anyone have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold; and if the debt falls into our hands we will take only the chattel mentioned in the deed.

11. And if anyone shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they shall have necessities provided for them, according to the tenement of the deceased; and out of the residue the debt shall be paid, saving, however, the service due the lords; and in like manner shall it be done touching debts due to others than the Jews.

12. No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our eldest son knight, and once for marrying our eldest daughter; and for these there shall be paid no more than reasonable aid. In like manner it shall be concerning the aids of the city of London.

13. And the city of London shall have all of its ancient liberties and free customs, as well by land as by water; furthermore we will and grant, that all other cities and buroughs, and towns and ports, shall have all their liberties and free customs.

14. And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we will cause to be summoned the archbishops, bishops, abbots, earls, and greater barons of the realm, singly by our letters. And furthermore we will cause to be summoned generally by our sheriffs and bailiffs, all others who hold us in chief, for a certain day, that is to say forty days before their meeting at least and to a certain place; and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

15. We will not for the future grant to anyone that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall be paid only reasonable aid.

16. No man shall be distrained to perform more service for a knight's fee, or other fee tenement than is due from thence.

17. Common pleas shall not follow our court, but shall be holden in some place certain.

18. Trials upon the writ of novel disseisin, and of mort d'ancestor, and of darrien presentment, shall not be taken but in their proper

counties, and after this manner: We, or, if we should be out of the realm, our chief iusticiary, will send two justiciaries through every county four times a year, who, with four knights of each county, chosen by the county, shall hold the said assizes, in the county, on the day, and at the place appointed.

19. And if any matters cannot be determined on the day appointed for the holding the assizes, in each county, so many of the knights and freeholders as have been at the assizes aforesaid, shall stay to decide them, as is necessary, according as there is more or less business.

20. A freeman shall not be amerced for a small offence, but only after the degree of the offence; and for a great crime according to the heinousness of it, saving to him his contenement; and after the same manner a merchant, saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men of the neighborhood.

21. Earls and barons shall not be amerced, but by their peers, and after the degree of the offence.

22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice.

23. Neither a town nor any tenement shall be distrained to make bridges or banks, unless that anciently of right they are bound to do it.

24. No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the crown.

25. All counties, hundreds, wapentakes, and tythings, shall stand at the old rents, without increase, except in our demesne manors.

26. If any one holding of us a lay fee die, and the sheriff, or our bailiffs, show our letters of patent, of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the dead, found upon his lay fee, to the amount of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfill the testament of the dead, and if there be nothing due from him to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by view of the church; saving to everyone his debts which the deceased owed to him.

28. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it, or hath respite of payment by the good will of the seller.

29. No constable shall distrain any knight to give money for castle-guard, if he himself will do it in his person, or by another able man in case he cannot do it through any reasonable cause. And if we have carried or sent him into the army, he shall be free from such guard for the time he shall be in the army by our command.

30. No sheriff or bailiff of ours, or any other, shall take horses or

carts of any freeman for carriage, without the consent of the said freeman.

31. Neither will we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

32. We will retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the free.

33. All weirs for the time to come shall be put down in the rivers Thames and Medway, and throughout all England, except upon the sea-coast.

34. The writ, which is called *prascipe*, for the future, shall not be made out to anyone, of any tenement, whereby a freeman may lose his court.

35. There shall be one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haberjects, that is to say, two ells within the lists and it shall be of weights as it is of measures.

36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

37. If any do hold of us by fee-farm, or by socage, or by burgage, and he hold also lands of any other by knight service, we will not have the custody of the heir or land, which is holden of another man's fee by reason of that fee-farm, socage, or burgage, neither will we have the custody of the fee-farm, socage or burgage; unless knight's service was due us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service, by reason of any petty serjeanty by which he holds of us, by the service of paying a knife, an arrow, or the like.

38. No bailiff from henceforth shall put any man to his law upon his own bare saying, without creditable witnesses to prove it.

39. No freeman shall be taken or imprisoned, or disseised, or outlawed or banished, or in any way destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.

40. To none will we sell, to none will we deny, or delay, right or justice.

41. All merchants shall have safe and secure conduct to go out of, and to come into England, and to stay there, and to pass as well by land as water, for buying and selling by the ancient and allowed customs, without any unjust tolls; except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of war, they shall be attached without damage to their bodies or goods, until it be known unto us, of our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions.

42. It shall be lawful for the time to come, for any one to go

out of our kingdom, and return safely and securely, by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be treated as is above mentioned.

43. If any man holds of any escheat, as of the honor of Wallingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hand, and are baronies, and die, his heir shall give no other relief and perform no other service to us, than he would do to the baron, if it were in the baron's hand; we will hold it after the same manner as the baron held it.

44. Those men who dwell without the forest, from henceforth shall not come before our justiciaries of the forest, upon common summons, but such as are impleaded, or are pledges for any that are attached for something concerning the forest.

45. We will not make any justices, constables, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it.

46. All barons who have founded abbeys, and have the kings of England's charters or advowson, or the ancient tenure thereof, shall have the keeping of them, when vacant, as they ought to have.

47. All forests that have been made forests in our time, shall forthwith be disforested; and the same shall be done with the water banks that have been fenced in by us in our time.

48. All evil customs concerning forests, warrens, foresters and warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be inquired into in each county by twelve sworn knights of the same shire, chosen by creditable persons of the same county; and within forty days after the said inquest, be utterly abolished so as never to be restored. So as we are first acquainted therewith, or our justiciary, if we be not in England.

49. We will immediately give up all hostages and writings delivered unto us by our English subjects, as sureties for their keeping the peace, and yielding us faithful service.

50. We will entirely remove from our bailiwicks the relations of Gerard de Athyes, so that for the future they shall have no bailiwick in England; we will also remove Engeland de Cygony, Andrew, Peter and Gyon, from the Chancery; Gyon de Cygony, Geoffrey de Martyn and his brothers; Philip Mark and his brothers, and his nephew, Geoffrey, and their whole retinue.

51. As soon as peace is restored, we will send out of the kingdom all foreign soldiers, cross-bowmen, and stipendiaries, who are come with horses and arms to the prejudice of our people.

52. If any one has been dispossessed or deprived by us, without legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, let the matter be decided by the five-and-twenty barons hereafter mentioned, for the preservation of the peace. As for all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry our

father, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there is a plea depending, or whereof an inquest hath been made, by our order, before we undertake the crusade, but when we return from our pilgrimage, or if perchance we tarry at home and do not make our pilgrimage, we will immediately cause full justice to be administered therein.

53. The same respite we shall have (and in the same manner about administering justice, disafforesting the forests, or letting them continue) for disafforesting the forests, which Henry our father, and our brother Richard have afforested; and for the keeping of the lands which are in another's fee, in the same manner as we have hitherto enjoyed those wardships, by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right; and when we return from our pilgrimage, or if we tarry at home and do not make our pilgrimage, we will immediately do full justice to all the complainants in this behalf.

54. No man shall be taken or imprisoned upon the appeal of a woman, for the death of any other than her husband.

55. All unjust and illegal fines made by us, and all ameriaments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be left to the decision of the five-and-twenty-barons hereinafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five-and-twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair and others be chosen in their room, out of the said five-and-twenty, and sworn by the rest to decide the matter.

56. If we have disseised or dispossessed the Welsh, of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the Marche by the judgment of their peers; for tenements in England, according to the law of England, for tenements in Wales according to the law of Wales, for tenements of the Marche according to the law of the Marche; the same shall the Welsh do to us and our subjects.

57. As for all those things of which a Welshman hath, without the legal judgment of his peers, been disseised or deprived of by King Henry our father, or our brother King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the crusaders; excepting those things about which a suit is depending, or whereof an inquest has been made by our order before we under-

took the crusade; but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewellyn, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

59. We will treat with Alexander, King of Scots, concerning the restoration of his sisters and hostages, and his rights and liberties, in the same form and manner as we shall do to the rest of the barons of England; unless by the charters which we have from his father, William, late King of Scots, it ought to be otherwise; but this shall be left to the determination of his peers in our court.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us towards all people of our kingdom, as well clergy as laity shall observe as far as they are concerned, towards their dependents.

61. And whereas, for the honor of God and the amendment of our kingdom, and for the better quieting the discord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five-and-twenty barons of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed; so that if we, our justiciary, our bailiffs, or any of our officers, shall in any circumstances fail in the performance of them, towards any person, or shall break through any of these articles of peace and security and the offence be notified to four barons chosen out of the five-and-twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance, shall petition to have it redressed without delay; and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary, if we should be out of the realm, the four barons aforesaid shall lay the cause before the rest of the five-and-twenty barons; and the said five-and-twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person, and the persons of our queen and children; and when it is redressed they shall obey as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five-and-twenty and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

barons aforesaid, in the execution of the premises, and will distress us jointly with them, to the utmost of his power; and we give public

62. As for those of our subjects who will not, of their own ac-

cord, swear to join the five-and-twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five-and-twenty barons dies, or goes out of the kingdom, or is hindered in any other way from carrying the things aforesaid into execution, the rest of the said five-and-twenty barons may choose another in his room, at their discretion, who shall be sworn in like manner as the rest. In all things that are committed to the execution of these five-and-twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not, or cannot, come, whatever is agreed upon, or enjoined, by the major part of those that are present, shall be reputed as firm and valid as if all the five-and-twenty had given their consent; and the aforesaid five-and-twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to be observed. And we will not, by ourselves, or by any other, procure any thing whereby any of these concessions and liberties may be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other. And all the ill will, indignations and rancours that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive; moreover all trespasses occasioned by the said dissensions, from Easter in the fifteenth year of our reign, till the restoration of peace and tranquility, we hereby entirely remit to all, both clergy and laity, and, as far as in us lies, do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, lord archbishop of Canterbury, Henry, lord archbishop of Dublin, and the bishops aforesaid, as also of Master Pandulph, for the security and concessions aforesaid.

63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all the men in our kingdom have and hold all the aforesaid liberties, rights and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, forever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall be observed, bona fide and without evil subtilty.

Given under our hand in the presence of the witnesses above named and many others, in the meadow called Runnymede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

These are the twenty-five elected barons:

RICHARD, EARL OF CLARE.

WILLIAM DE FORTIBUS, EARL OF AUMERLE.

GEOFFREY DE MANDEVILLE, EARL OF GLOUCESTER.

SAHER DE QUINCEY, EARL OF WINCHESTER.

HENRY DE BOHUN, EARL OF HEREFORD.

ROGER BIGOT, EARL OF NORFOLK.

ROBERT DE VERE, EARL OF OXFORD.

WILLIAM MARESCHAL, JUNIOR.
ROBERT FITZ-WALTER.
GILBERT DE CLARE.
EUSTACE DE VESCY.
WILLIAM DE HARDWELL, MAYOR OF LONDON.
WILLIAM DE MOWBRAY.
GEOFFREY DE SAY.
ROGER DE MUMBEZON.
WILLIAM DE HUNTINGFIELD.
ROBERT DE ROSS.
JOHN DE LACY.
WILLIAM DE ALBENIAC.
ROBERT DE PERCY.
WILLIAM MALET.
JOHN FITZ-ROBERT.
WILLIAM DE LANVALAY.
HUGH BIGOD.
RICHARD DE MUNTFICHTET.

Declaration of Independence.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness; That to secure these rights Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

He has kept among us, in times of peace, Standing Armies, without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond the Seas to be tried for pretended offences:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally, the Forms of our Government:

For suspending our own Legislature, and declaring themselves invested with Power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging war against us.

He has plundered our seas, ravished our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has incited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions, we have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.

Nor have We been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of a common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace, Friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to Levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

NEW HAMPSHIRE.

JOSIAH BARTLETT, WM. WHIPPLE,
MATTHEW THORNTON

MASSACHUSETTS BAY.

SAML. ADAMS, JOHN ADAMS,
ROBT. TREAT PAINE, ELDRIDGE GERRY,

RHODE ISLAND.

STEP. HOPKINS, WILLIAM ELLERY,

CONNECTICUT.

ROGER SHERMAN, SAM'L. HUNTINGTON,
WM. WILLIAMS, OLIVER WOLCOTT,

NEW YORK.

WM. FLOYD, PHIL. LIVINGSTON,
FRANS. LEWIS, LEWIS MORRIS,

NEW JERSEY.

RICHD. STOCKTON, JNO. WITHERSPOON,
FRANS. HOPKINSON, JOHN HART,
ABRA. CLARK,

PENNSYLVANIA.

ROBT. MORRIS, BENJAMIN RUSH,
BENJA. FRANKLIN, JOHN MORTON,
GEO. CLYMER, JAS. SMITH,
GEO. TAYLOR, JAMES WILSON,
GEO. ROSS,

DELAWARE.

CAESAR RODNEY, GEO. READ,
THO. M'KEAN,

MARYLAND.

SAMUEL CHASE, WM. PACA,
THOS. STONE, CHARLES CARROL, of Carrollton,

VIRGINIA.

GEORGE WYTHE, RICHARD HENRY LEE,
TH. JEFFERSON, BENJA. HARRISON,
THOS. NELSON, Jr., FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON,

NORTH CAROLINA.

WM. HOOPER, JOSEPH HEWES.
JOHN PENN,

SOUTH CAROLINA.

EDWARD RUTLEDGE, THOS. HAYWARD, Junr.,
THOS. LYNCH, Junr., ARTHUR MIDDLETON,

GEORGIA.

BUTTON GWINNETT, LYNAN HALL.
GEO. WALTON,

CONSTITUTION OF THE UNITED STATES.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives, shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall choose their Speaker and other officers: and shall have the sole Power of Impeachment.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the First Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall choose their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two-thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and Disqualification to hold and enjoy any office of Honor, Trust, or Profit under the United States; but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of

either House on any question shall, at the Desire of one-fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall without the consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. The Senators and Representatives shall receive a Compensation for their services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two-thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same Shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States;

but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and Post Roads;

To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the same shall be, for the erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings:—and

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended,

unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another; nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of Delay.

ARTICLE II.

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an office of Trust or Profit under the United States, shall be appointed an Elector.

[Here followed provisions as to the mode of casting the electoral votes, which are superseded by the Twelfth Amendment.]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President, and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased or diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) "that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect, and "defend the Constitution of the United States.

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they may thing proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in case of Disagreement between them, with Respect to Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers, and Consuls;—to all Cases of admiralty and maritime jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attained.

ARTICLE IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

The Congress, whenever two thirds of both Houses shall deem it necessary shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article, and

that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, Anything in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names.

Go: WASHINGTON, Presidt and Deputy from Virginia.

NEW HAMPSHIRE.

JOHN LANGDON,

NICHOLAS GILMAN.

MASSACHUSETTS.

NATHANIEL GORHAM,

RUFUS KING.

CONNECTICUT.

WM. SAML. JOHNSON,

ROGER SHERMAN.

NEW YORK.

ALEXANDER HAMILTON.

NEW JERSEY.

WIL. LIVINGSTON,

DAVID BREARLY,

WM. PATTERSON,

JON. DAYTON.

PENNSYLVANIA.

B. FRANKLIN,

THOMAS MIFFLIN,

ROBT. MORRIS,

GEO: CLYMER,

THO: FITZSIMMONS,

JARED INGERSOLL,

JAMES WILSON,

GOUV: MORRIS.

DELAWARE.

GEO: READ,
JOHN DICKENSON,
JACO: BROOM.

RICHARD BASSETT,
GUNNING BEDFORD, Jun'r,

MARYLAND.

JAMES MCHENRY,
DAN. OF ST. THO: JENIFER.

DANL. CARROLL,

VIRGINIA.

JOHN BLAIR,

JAMES MADISON, JR.

NORTH CAROLINA.

WM. BLOUNT,
RICHD. DOBBS, SPAIGHT,

HU. WILLIAMSON,

SOUTH CAROLINA.

J. RUTLEDGE,
CHARLES COTESWORTH PINCKNEY,

CHARLES PINCKNEY,
PIERCE BUTLER.

GEORGIA.

WILLIAM FEW,

ABR. BALDWIN.

Attest: WILLIAM JACKSON, *Secretary*.

ARTICLES.

IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE
UNITED STATES OF AMERICA.

Proposed by Oongress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Oonsiitution.

(ARTICLE I).

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(ARTICLE II).

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(ARTICLE III).

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

(ARTICLE IV).

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(ARTICLE V).

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment or a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(ARTICLE VI).

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have Compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

(ARTICLE VII).

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

(ARTICLE VIII).

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

(ARTICLE IX).

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

(ARTICLE X).

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

(ARTICLE XI).

The Judicial power of the United States shall not be construed to

extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

(ARTICLE XII).

The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

(ARTICLE XIII).

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

(ARTICLE XIV).

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office- civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(ARTICLE XV).

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

ORGANIC ACT

OF THE TERRITORY OF IDAHO.

AN ACT

TO PROVIDE A TEMPORARY GOVERNMENT FOR THE TERRITORY OF IDAHO.

Section.

1. Territory of Idaho, boundaries.
2. Executive power, governor, etc.
3. Secretary, when to act as governor.
4. Legislative power, what constitutes, length of session, etc.
5. Voters at first election.
6. Veto power of governor, taxes, etc.
7. District, county, or township officers.
8. Members of assembly, who may be.
9. Judicial power, with whom vested.

Section.

10. Territorial officers, appointment of, salaries, pay of.
11. Members of assembly, session of, etc.
12. Seat of government, delegate, constitutional laws, etc.
13. Delegate in congress; how elected, and qualifications of electors.
14. Public lands, school sections.
15. Judicial districts and judges.
16. Officers to give bonds.
17. Treaties with Indians, agancies, etc.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That all that part of the territory of the United States included within the following limits, to-wit: Beginning at a point in the middle channel of the Snake river where the northern boundary of Oregon intersects the same; then follow down the said channel of Snake river to a point opposite the mouth of Kooskooskia, or Clearwater river; thence due north to the forty-ninth parallel of latitude; thence east along said parallel to the twenty-seventh degree of longitude west of Washington; thence south along said degree of longitude to the northern boundary of Colorado territory; thence west along said boundary to the thirty-third degree of longitude west of Washington; thence north along said degree to the forty-second parallel of latitude; thence west along said parallel to the eastern boundary of the State of Oregon; thence north along said boundary to the place of beginning. And the same is hereby created into a temporary government, by the name of the Territory of Idaho: *Provided,* That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory or changing its boundaries in such manner and at such time as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided, further,* That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such right shall remain inextinguished by treaty between the United States and such Indians, or include any territory, which, by treaty with the Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or

jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the Territory of Idaho, until said tribe shall signify their assent to the president of the United States to be included within said territory, or to affect the authority of the government of the United States, to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never been passed.

Section 2. *And be it further enacted,* That the executive power and authority in and over said Territory of Idaho shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, and shall be commander-in-chief of the militia, and superintendent of Indian affairs thereof. He may grant pardons and respites for offenses against the laws of said territory, and reprieve for offenses against the laws of the United States until the decision of the president of the United States can be made known thereof; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

Section 3. *And be it further enacted,* That there shall be a secretary of said territory, who shall reside therein, and shall hold his office for four years, unless sooner removed by the president of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives for the use of congress; and in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

Section 4. *And be it further enacted,* That the legislative power and authority of said territory shall be vested in the governor and legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall at its first session, consist of thirteen members possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of representatives

may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made as nearly equal as practicable among the several counties or districts for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and may be conducted in such manner both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place, and manner of holding and conducting all elections by the people and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly; *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

Section 5. *And be it further enacted*, That every free white male inhabitant above the age of twenty-one years, who shall have been an actual resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

Section 6. *And be it further enacted*, That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary

disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it becomes a law, be presented to the governor of the territory; if he approve, he shall sign it; but if not he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return; in which case it shall not be a law: *Provided*, That whereas slavery is prohibited in said territory by an act of congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

Section 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Idaho. The governor shall nominate and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

Section 8. *And be it further enacted*, That no member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

Section 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually and they shall hold their of-

fices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and justices of the peace, shall be limited by law: *Provided*, That justices of the peace shall have no jurisdiction of any matter in controversy when the title or boundaries of any land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common-law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law. The supreme court, or justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said supreme court shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit court of the United States, where the value of the property of the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the said supreme court created by this act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all cases shall be made to the supreme court of said territory, the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington territory now receive for similar services.

Section 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present Territory of Washington. There shall also be a marshal for the territory appointed, who shall hold his

office for four years, and until his successor shall be appointed and qualified unless sooner removed by the president of the United States, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present Territory of Washington and shall, in addition be paid two hundred dollars annually as a compensation for extra services.

Section 11. *And be it further enacted,* That the governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be appointed by the president of the United States, by and with the advice and consent of the senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such respectively, take an oath or affirmation, before the district judge or some justice of the peace in the limits of said territory, duly authorized to administer oaths or affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the Constitution of the United States, and faithfully to discharge duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificate shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and the associate justices, and all civil officers in said territory, before they act as such shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars, the chief justice and associate justices shall receive an annual salary of two thousand five hundred dollars, the secretary shall receive an annual salary of two thousand dollars; the said salaries shall be paid quarter-yearly from the dates of the respective appointments, at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive four dollars each per day, during their attendance at the sessions thereof and four dollars each for every twenty miles traveled in going to and returning from said sessions estimated according to the nearest usually traveled route, and an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms and doorkeeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the legislative as-

sembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislative assembly annually, unless, on an extraordinary occasion, the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum to be expended by the governor to defray the contingent expenses of the territory, including the salary of the clerk of the executive department; and there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the legislative assembly, the printing of the laws and other incidental expenses; and the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Section 12. *And be it further enacted*, That the legislative assembly of the territory of Idaho shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible: *Provided*, That the seat of government fixed by the governor and legislative assembly shall not be at any time changed, except by an act of the said assembly duly passed, and which shall be approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

Section 13. *And be it further enacted*, That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the constitution and all the laws of the United States which are not locally inapplicable shall have the

same force and effect within the said Territory of Idaho as elsewhere within the United States.

Section 14. *And be it further enacted,* That when the lands in the said territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

Section 15. *And be it further enacted,* That until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

Section 16. *And be it further enacted,* That all officers to be appointed by the president of the United States, by and with the advice and consent of the senate, for the Territory of Idaho, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted with them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

Section 17. *And be it further enacted,* That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the offices of said agencies or superintendencies.

Approved, March 3d, 1863.

PROVISIONS COMMON TO ALL THE TERRITORIES.

Section.

- 1839. Right of Indians in person and property not impaired by this title, etc., boundaries, etc.
- 1840. Authority to regulate Indians. Jurisdiction of Indians.
- 1841. Executive power.
- 1842. Veto power.
- 1843. Secretary.
- 1844. Secretary's duties.
- 1845. Salaries of governors and secretaries.
- 1846. Legislative power.
- 1847. Census and elections.
- 1848. Time and place of holding elections.
- 1849. Apportionment.
- 1850. Laws to be submitted to congress.
- 1851. Extent of legislative powers.
- 1852. Limit of time of sessions. Compensation of members. Number of members, etc.
- 1854. Members of legislature prohibited from holding certain offices.
- 1855. Prohibition of extra compensation to certain officers.
- 1856. Election of justices of the peace and militia officers.
- 1857. Other officers.
- 1858. Vacancies, how filled.
- 1859. Qualifications of voting and holding office at first election.
- 1860. At future elections.
- 1861. Subordinate officers of legislature.
- 1862. Delegate to congress.
- 1863. Time, places, and manner of electing delegate.
- 1864. Supreme courts of territories.
- 1865. Judicial districts and courts.
- 1866. Jurisdiction of courts.
- 1867. Jurisdiction of justices of the peace.
- 1868. Chancery and common law jurisdiction.

Section.

- 1869. Appellate jurisdiction of supreme court.
- 1870. Clerk of supreme court.
- 1871. Clerk of district court.
- 1872. Register in chancery, residence and office.
- 1873. Judicial district, how defined.
- 1874. Judges of supreme court to hear certain causes.
- 1875. District attorneys.
- 1876. Marshals.
- 1877. Appointment of governor, etc.
- 1878. Oath of office; how qualified.
- 1879. Salaries of justices.
- 1880. Salary of attorney.
- 1881. Salary of marshal.
- 1882. When salaries to be paid.
- 1883. Fees of clerks, etc.
- 1884. Salary not to be paid when officer is absent.
- 1885. Seat of government in a new territory.
- 1886. Accounts of the territories; no payment unless approved by congress.
- 1887. Limitation on expenses of printing.
- 1888. Limitation on expenses of legislature.
- 1889. Legislatures not to grant special charters or pass special laws.
- 1890. Limitation on rights of religious corporations to hold real estate.
- 1891. Constitution and laws of United States made applicable to all the territories.
- 1893. Rules for the government of penitentiaries.
- 1894. Payment of marshal, etc., and of expenses of subsistence, etc., of offenders.
- 1895. Imprisonment in penitentiaries. Public school.

Section 1839. Nothing in this title shall be construed to impair the rights of person or property pertaining to the Indians in any territory, so long as such rights remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with any Indian tribe, is not, without the consent of such tribe, embraced within the territorial limits, or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of any territory now or hereafter organized until such tribe signifies its assent to the president to be embraced within a particular territory.

Section 1840. Nor shall anything in this title be construed to affect the authority of the United States to make any regulation re-

specting the Indians of any territory, their lands, property, or rights, by treaty, law, or otherwise, in the same manner as might be made if no temporary government existed, or is hereafter established, in any such territory.

Section 9. That immediately upon and after the date of the passage of this act, all Indians, committing against the person or property of another Indian, or other person, any of the following crimes, namely: murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny, within any territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases; and all such Indians committing any of the above crimes against the person or property of another Indian or other person within the boundaries of any state of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States. [Act March 3, 1885].

Section 1841. The executive power of each territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. He shall reside in the territory for which he is appointed, and shall be commander-in-chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the president can be made known thereon. He shall commission all officers who are appointed under the laws of such territory, and shall take care that the laws thereof be faithfully executed.

Section 1842. Every bill which has passed the legislative assembly of any territory shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it originated, and that house shall enter the objections at large on its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved, by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the journal of such house. If any bill is not returned by the governor within three days, Sundays

excluded, except in Washington and Wyoming, where the term is five days, Sundays excluded, after it has been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislative assembly, by adjournment sine die, prevent its return, in which case it shall not be a law.

Section 1843. There shall be appointed a secretary for each territory, who shall reside within the territory for which he is appointed, and shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president. In case of the death, removal, resignation or absence of the governor from the territory, the secretary shall execute all the powers and perform all the duties of governor, during such vacancy, or absence, or until another governor is appointed and qualified.

Section 1844. The secretary shall record and preserve all the laws and proceedings of the legislative assembly, and all the acts and proceedings of the governor in the executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the president, and two copies of the laws, within like time, to the president of the senate and to the speaker of the house of representatives, for the use of congress. He shall transmit one copy of the executive proceedings and official correspondence semi-annually, on the first day of January and July in each year, to the president. He shall prepare the acts passed by the legislative assembly for publication, and furnish a copy thereof to the public printer of the territory, within ten days after the passage of each act.

And hereafter it shall be the duty of the secretary of each territory to furnish estimates in detail for the lawful expenses thereof, to be presented to the secretary of the treasury on or before the first day of October of every year. [Act June 20, 1874].

Section 1845. From and after the first day of July, eighteen hundred and seventy-three, the annual salaries of the governors of the several territories shall be three thousand five hundred dollars, and the salaries of the secretaries shall be two thousand five hundred dollars each.

Section 1846. The legislative power in each territory shall be vested in a governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The members of both branches of the legislative assembly shall have the qualifications of voters as herein prescribed. They shall be chosen for the term of two years, and the sessions of the respective legislative assemblies shall be biennial. Each legislative assembly shall fix by law the day of the commencement of its regular sessions. The members of the council and of the house of representatives shall reside in the district or county for which they are respectively elected.

Section 1847. Previous to the first election for members of the legislative assembly of a territory in which congress may hereafter provide a temporary government, the governor shall cause a census of the inhabitants and qualified voters of the several counties and dis-

tricts of the territory to be taken by such persons and in such mode as he may designate and appoint, and the persons so appointed shall receive a reasonable compensation for their services. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who superintend such election and the returns thereof, as the governor may direct; and he shall, at the same time, declare the number of members of the council and the house of representatives to which each of the counties or districts is entitled under the act providing such temporary government for the particular territory. The persons having the highest number of legal votes in each of the districts for members of the council, shall be declared by the governor to be duly elected to the council, and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of that house; but in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor appoints.

Section 1848. After such first election, however, the time, place and manner of holding elections by the people in any newly created territory, as well as of holding all such elections in territories now organized, shall be prescribed by the laws of each territory.

Section 1849. The apportionment of representation, which the governor is authorized to make by section eighteen hundred and forty-seven, in the case of a territory hereafter erected by congress, shall be as nearly equal as practicable among the several districts and counties for such first election of the council and house of representatives, giving to each section of the territory representation in the ratio of its population, except Indians not taxed; and thereafter in such new territory, as well as in all territories now organized, the legislative assemblies, respectively, may re-adjust and apportion the representation of the two houses thereof, among the several counties and districts, in such manner, from time to time, as they deem just and proper but the number of either house, as authorized by law, shall not be increased.

Section 1850. All laws passed by the legislative assembly and governor of any territory except in the territories of Colorado, Dakota, Idaho, Montana, and Wyoming, shall be submitted to congress, and, if disapproved, shall be null and of no effect.

Section 1851. The legislative power of every territory shall extend to all rightful subjects of legislation, not inconsistent with the constitution and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.

Section 1852. The session of the legislative assemblies of the

several territories of the United States shall be limited to sixty days' duration. [Act Dec. 23, 1880].

That from and after the adjournment of the next session of the several territorial legislatures the council of each of the territories of the United States shall not exceed twelve members, and the house of representatives of each shall not exceed twenty-four members, and the members of each branch of the said several legislatures shall receive a compensation of four dollars per day each during the sessions provided by law, and shall receive such mileage as the law provides;

And the president of the council and the speaker of the house of representatives shall each receive six dollars per day for the same time.

And the several legislatures at their next sessions are directed to divide their respective territories into as many council and representative districts as they desire, which districts shall be as nearly equal as practicable, taking into consideration population, except "Indians not taxed;"

Provided, The number of council districts shall not exceed twelve, and the representative districts shall not exceed twenty-four in any one of said territories, and all parts of sections eighteen hundred and forty-seven; eighteen hundred and forty-nine; eighteen hundred and fifty-three; and nineteen hundred and twenty-two of the Revised Statutes of the United States in conflict with the provisions herein are repealed. [Act June 19, 1878].

Section 1854. No member of the legislative assembly of any territory now organized shall hold or be appointed to any office which has been created, or the salary or emoluments of which have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly in any territory hereafter organized; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of any territory. The exception of postmasters shall not apply to the Territory of Washington.

Section 1855. No law of any territorial legislature shall be made or enforced, by which the governor or secretary of a territory, or the members or officers of any territorial legislature are paid any compensation other than that provided by the laws of the United States.

Provided, That for the performance of all official duties imposed by the territorial legislatures, and not provided for in the organic act, the secretaries of the territories respectively shall be allowed such fees as may be fixed by the territorial legislatures. [Act June 19, 1878].

Section 1856. Justices of the peace and all general officers of the militia, in the several territories, shall be elected by the people, in such manner as the respective legislatures may provide by law.

Be it enacted, etc. (Section 1). That when from any cause there shall be a vacancy in the office of justice of the peace in any of the territories of the United States, it shall be lawful to fill such vacancy by appointment or election, in such manner as has been or may be provided by the governor and legislative assembly of such territory.

Provided, That such appointee, or person elected to fill such vacancy, shall hold office only until his successor shall be regularly elected and qualified as provided by law. [Act April 16, 1880].

Section 1857. All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by and with the advice and consent of the legislative council of each territory, shall appoint; but, in the first instance, where a new territory is hereafter created by congress, the governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

Section 1858. In any of the territories, whenever a vacancy happens from resignation or death, during the recess of the legislative council, in any office which, under the organic act of any territory, is to be filled by appointment of the governor, by and with the advice and consent of the council, the governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative council.

Section 1859. Every male citizen above the age of twenty-one including persons who have legally declared their intention to become citizens in any territory hereafter organized, and who are actual residents of such territory at the time of the organization thereof, shall be entitled to vote at the first election in such territory, and to hold any office herein; subject, nevertheless, to the limitations specified in the next section.

Section 1860. At all subsequent elections, however, in any territory hereafter organized by congress, as well as at all elections in territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the legislative assembly of each territory; subject, nevertheless, to the following restrictions on the power of the legislative assembly, namely:

First.—The right of suffrage and of holding office shall be exercised only by citizens of the United States, above the age of twenty-one years, and by those above that age who have declared on oath, before a competent court of record, their intention to become such,

and have taken an oath to support the Constitution and government of the United States.

Second.—There shall be no denial of the elective franchise, or of holding office to a citizen on account of race, color, or previous condition of servitude.

Third.—No officer, soldier, seaman, mariner, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in any territory, by reason of being on service therein, unless such territory is and has been for the period of six months, his permanent domicile.

Fourth.—No person belonging to the army or navy shall be elected to or hold any civil office or appointment in any territory, except officers of the army on the retired list. [Act March 3, 1883].

Section 1861. That the subordinate officers of each branch of said territorial legislatures shall consist of one chief clerk, who shall receive a compensation of six dollars per day; one enrolling and engrossing clerk, at five dollars per day; sergeant-at-arms and doorkeeper, at five dollars per day; one messenger and watchman, at four dollars per day each; and one chaplain, at one dollar and fifty cents per day.

Said sums shall be paid only during the sessions of said legislatures; and no greater number of officers or charges per diem shall be paid or allowed by the United States to any territory. [Act June 19, 1878].

Section 1862. Every territory shall have the right to send a delegate to the house of representatives of the United States, to serve during each congress, who shall be elected by the voters in the territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the house of representatives, with the right of debating, but not of voting.

Section 1863. The first election of a delegate in any territory for which a temporary government is hereafter provided by congress, shall be held at the time and places, and in the manner the governor of such territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein for a delegate, as well as at all elections for a delegate in organized territories, such time, places, and manner of holding the election shall be prescribed by the law of each territory.

Section 1864. The supreme court of every territory shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and they shall hold their offices for four years, and until their successors are appointed and qualified. They shall hold a term annually at the seat of government of the territory for which they are respectively appointed.

Section 1865. Every territory shall be divided into three judicial districts; and a district court shall be held in each district of the territory by one of the justices of the supreme court, at such time

and place as may be prescribed by law; and each judge, after assignment, shall reside in the district to which he is assigned.

Section 1866. The jurisdiction, both appellate and original, of the courts provided for in section 1907 and 1908, shall be limited by law.

Section 1867. No justices of the peace in any territory shall have jurisdiction of any case, in which the title to land, or the boundary thereof, in anywise comes in question.

Section 1868. The supreme court and the district courts, respectively, of every territory, shall possess chancery as well as common law jurisdiction.

Whereas, by the organic acts establishing several of the territories of the United States, it is provided that certain courts thereof shall have common law and chancery jurisdiction, and doubts have been entertained whether said jurisdictions must be exercised separately, or whether they may be exercised together in the same proceeding, and whether the codes and rules of practice adopted in said territories which have authorized a mingling of said jurisdictions in the same proceeding, or a uniform course of proceedings in all cases legal and equitable, are repugnant to the said organic acts respectively: Therefore,

Be it enacted, etc., That it shall not be necessary in any of the courts of the several territories of the United States, to exercise separately the common law and chancery jurisdictions vested in said courts; and that the several codes and rules of practice adopted in said territories respectively in so far as they authorize a mingling of said jurisdictions or a uniform course of proceeding in all cases whether legal or equitable, be confirmed; and that all proceedings heretofore had or taken in said courts in conformity with said respective codes and rules of practice, so far as relates to the form and mode of proceeding, be, and the same are hereby, validated and confirmed: *Provided*, That no party has been or shall be deprived of the right of trial by jury in cases cognizable at common law. [Act April 7, 1874].

Section 1869. Writs of error, bills of exception, and appeals shall be allowed, in all cases, from the final decisions of the district courts to the supreme court, of all the territories, respectively, under such regulation as may be prescribed by law, but in no case, removed to the supreme court, shall trial by jury be allowed in that court.

Section 1870. The supreme court of each territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed.

Section 1871. Each judge of the supreme court of the respective territories shall designate and appoint one person as clerk of the district over which he presides, where one is not already appointed, and shall designate and retain but one such clerk where more than one is already appointed, and only such district clerk shall be entitled to a compensation from the United States.

Section 1872. Every district clerk shall also be the register in

chancery, and shall reside and keep his office at the place where the court is held.

Section 1873. Temporarily, and until otherwise provided by law, the governor of every territory, which may be hereafter established, shall define, by proclamation, the judicial districts of such territory, and assign the judges appointed for such territory, to the several districts, as well as fix the times and places for holding courts in the respective counties or subdivisions of each judicial district.

Section 1874. The judges of the supreme court of each territory, are authorized to hold court within their respective districts, in the counties wherein, by the laws of the territory, courts have been or may be established; for the purpose of hearing and determining all matters and causes, except those in which the United States is a party; but the expense of holding such courts shall be paid by the territory, or by the counties in which the courts are held, and the United States shall in no case be chargeable therewith.

Section 1875. There shall be appointed in each territory a person learned in the law, to act as attorney for the United States. He shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

Section 1876. There shall be appointed a marshal for each territory. He shall execute all process issuing from the territorial courts when exercising their jurisdiction as circuit and district courts of the United States. He shall have the power and perform the duties, and be subject to the regulations and penalties, imposed by law, on the marshals for the several judicial districts of the United States. He shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the president.

Section 1877. The governor, secretary, chief justice, and associate justices, attorney, and marshal of every territory shall be nominated, and by and with the advice and consent of the senate, appointed by the president.

Section 1878. The governor and secretary for each territory shall, before they act as such, respectively take an oath before the district judge, or some justice of the peace in the limits of the territory for which they are appointed, duly authorized to administer oaths by the laws in force therein, or before the chief justice or some associate justice of the supreme court of the United States to support the Constitution of the United States and faithfully to discharge the duties of their respective offices; and such oaths shall be certified by the person before whom the same are taken; and such certificate shall be received and recorded by the secretary among the executive proceedings; and the chief justice and the associate justices, and all other civil officers appointed for any territory, before they act as such, shall take a like oath before the governor or secretary or some judge or justice of the peace of the territory who may be duly commissioned and qualified and such oath shall be certified and transmitted by the person taking the same to the secretary, to be, by him, recorded as above directed; but after the first qualification of the officers herein

specified in the case of a new territory, as well as in all organized territories, the like oath shall be taken, certified, and recorded in such manner and form as may be prescribed by the law of each territory.

Hereafter payment of salaries of all officers of the territories of the United States appointed by the president, shall commence only when the person appointed to any such office shall take the proper oath, and shall enter upon the duties of such office in such territory; and said oath shall hereafter be administered in the territory in which such office is held. [Act May 1, 1876]

Section 1879. The annual salary of the chief justice and associate justices of all the territories now organized, shall be three thousand dollars each.

Section 1880. The salary of the attorney of the United States for each territory, shall be at the rate of two hundred and fifty dollars annually.

Section 1881. The salary of the marshal of the United States for each territory, shall be at the rate of two hundred dollars a year.

Section 1882. The salaries provided for in this title, to be paid to the governor, secretary, chief justices and associate justices, district attorney and marshal of the several territories, shall be paid quarterly at the treasury of the United States.

That hereafter the salaries appropriated for the United States judges in the foregoing paragraphs, and judges of the court of claims, and of the territories, may be paid monthly. [Act March 3, 1881].

Section 1883. The fees and costs to be allowed to the United States attorneys and marshals, to the clerks of the supreme and district courts, and to jurors, witnesses, commissioners, and printers, in the territories of the United States, shall be the same for similar services by such persons as prescribed in Chapter sixteen, title "The Judiciary," and no other compensation shall be taxed or allowed.

Section 1884. When any officer of a territory is absent therefrom, and from the duties of his office, no salary shall be paid him during the year in which such absence occurs, unless good cause therefor be shown to the president, who shall officially certify his opinion of such cause to the proper accounting officer of the treasury, to be filed in his office.

Section 1885. The legislative assembly of every territory hereafter organized shall hold its first session at such time and place in the territory as the governor thereof shall appoint and direct; and at the first session of the legislative assembly, or as soon thereafter as it may be deemed expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for the territory at such place as they may think proper; but such place shall thereafter be subject to be changed by the governor and legislative assembly.

Section 1886. All accounts for disbursements, in the territories of the United States, of money appropriated by congress for the support of government therein, shall be settled and adjusted at the treasury department; and no act, resolution, or order of the legislature of

any territory, directing the expenditure of the sum, shall be deemed a sufficient authority for such disbursement, but sufficient vouchers and proof for the same shall be required by the accounting officers of the treasury. No payment shall be made or allowed, unless the secretary of the treasury has estimated therefor and the object been approved by congress. No session of the legislature of a territory shall be held until the appropriation for its expenses has been made.

Section 1887. Hereafter no expense for printing, exceeding four thousand dollars, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the territories.

And in no case shall the expenditure for public printing in any of the territories exceed the sum of two thousand five hundred dollars for any one year. [Act June 19, 1878].

Section 1888. No legislative assembly of a territory shall, in any instance or under any pretext, exceed the amount appropriated by congress for its annual expenses.

.. *Be it enacted, etc.,* That the legislatures of the territories of the United States now, or hereafter to be organized, shall not pass local or special laws in any of the following enumerated cases, that is to say:

Granting divorces.

Changing the names of persons or places.

Laying out, opening, altering, and working roads or highways.

Vacating roads, town-plats, streets, alleys and public grounds.

Locating or changing county seats.

Regulating county and township affairs.

Regulating the practice in courts of justice.

Regulating the the jurisdiction and duties of justices of the peace, police magistrates, and constables.

Providing for changes of venue in civil and criminal cases.

Incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village.

For the punishment of crimes or misdemeanors.

For the assessment and collection of taxes for territorial, county, township, or road purposes.

Summoning and impaneling grand or petit jurors.

Providing for the management of common schools.

Regulating the rate of interest on money.

The opening and conducting of any election or designating the place of voting.

The sale or mortgage of real estate belonging to minors or others under disability.

The protection of game or fish.

Chartering or licensing ferries or toll bridges.

Remitting fines, penalties, or forfeitures.

Creating, increasing or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed,

Changing the law of descent.

Granting to any corporation, association, or individual the right to lay down railroad tracks, or amending existing charters for such purpose.

Granting to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted in any of the territories of the United States by the territorial legislatures thereof.

Section 2. That no territory of the United States now or hereafter to be organized, or any political or municipal corporation or subdivision of any such territory, shall hereafter make any subscription to the capital stock of any incorporated company, or company or association having corporate powers, or in any manner loan its credit to, or use it for the benefit of any such company or association, or borrow any money for the use of any such company or association.

Section 3. That no law of any territorial legislature shall authorize any debt to be contracted by or on behalf of such territory except in the following cases: To meet a casual deficit in the revenues, to pay the interest upon the territorial debt, to suppress insurrections, or to provide for the public defense, except that in addition to any indebtedness created for such purposes, the legislature may authorize a loan for the erection of penal, charitable or educational institutions for such territory, if the total indebtedness of the territory is not thereby made to exceed one per centum upon the assessed value of the taxable property in such territory as shown by the last general assessment for taxation. And nothing in this act shall be construed to prohibit the refunding of any existing indebtedness of such territory or of any political or municipal corporation, county or other subdivision therein.

Section 4. That no political or municipal corporation, county or other subdivision, in any of the territories of the United States, shall ever become indebted in any manner or for any purpose to any amount in the aggregate, including existing indebtedness, exceeding four per centum on the value of the taxable property within such corporation, county, or subdivision, to be ascertained by the last assessment for territorial and county taxes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount given by such corporation shall be void. That nothing in this act contained shall be so construed as to affect the validity of any act of any territorial legislature heretofore enacted, or of any obligations existing or contracted thereunder, nor to preclude the issuing of bonds already contracted for in pursuance of express provisions of law; nor to prevent any territorial legislature from legalizing the acts of any county, municipal corporation, or subdivision of any territory as to any bonds heretofore issued or contracted to be issued.

Section 1889. The legislative assemblies of the several territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate, for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue) loan, trust and guarantee associations, and for the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any other benevolent, charitable, or scientific association.

Section 6. That nothing in this act contained shall be construed to abridge the power of congress to annul any law passed by a territorial legislature, or to modify any existing law of congress requiring in any case that the laws of any territory shall be submitted to congress.

Section 7. That all acts and parts of acts hereafter passed by any territorial legislature in conflict with the provisions of this act shall be null and void. [Act July 30, 1886].

Section 1890. No corporation or association, for religious or charitable purposes, shall acquire or hold real estate in any territory, during the existence of the territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Section 1891. The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized territories, and in every territory hereafter organized, as elsewhere within the United States.

Section 2. That the penitentiaries in the territories of Montana, Idaho, and Wyoming, shall continue under the care and control of the marshal of the United States for said territories, under and pursuant to the provisions of the act entitled, "An act in relation to certain territorial penitentiaries," approved January tenth, eighteen hundred and seventy-one; which said last mentioned act is hereby revived and re-enacted so far as the same applies to the territories of Montana, Idaho, and Wyoming. [Act June 20, 1874].

Section 1893. The attorney general of the United States shall prescribe all needful rules and regulations for the government of such penitentiary, and the marshal having charge thereof shall cause them to be duly and faithfully executed and obeyed, and the reasonable compensation of the marshal and his deputies, for their services under such regulations, shall be fixed by the attorney general.

Section 1894. The compensation, as well as the expense incident to the subsistence and employment of offenders against the laws of the United States, who have been, or may hereafter be sentenced to imprisonment, in such penitentiary, shall be chargeable

on, and payable out of the fund for defraying the expenses of suits in which the United States are concerned, and of the prosecutions for offenses committed against the United States; but nothing herein shall be construed to increase the maximum compensation now allowed by law to those officers.

Section 1895. Any person convicted by any court of competent jurisdiction in a territory, for a violation of the laws thereof, and sentenced to imprisonment, may, at the cost of such territory, on such terms and conditions as may be prescribed by such rules and regulations, be received, subsisted, and employed in such penitentiary during the term of his imprisonment, in the same manner as if he had been convicted of an offense against the laws of the United States.

Be it enacted, etc., That the legislative assemblies of the several territories of the United States may make such provision for the care and custody of such persons as may be convicted of crime under the laws of such territory as they shall deem proper, and for that purpose may authorize and contract for the care and custody of such convicts in any other territory or state, and provide that such person or persons may be sentenced to confinement accordingly in such other territory or state, and all existing legislative enactments of any of the territories for that purpose are hereby legalized: *Provided,* That the expense of keeping such prisoners shall be borne by the respective territories, and no part thereof shall be borne by the United States. [Act June 16, 1880].

Be it enacted, etc., That the nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the branches of study taught in the common or public schools, and in the military and naval schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of text books in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the territories, in the military and naval academies of the United States and in the District of Columbia, and in all Indian and colored schools in the territories of the United States.

Section 2. That it shall be the duty of the proper officers in control of any school described in the foregoing section to enforce the provisions of this act; and any such officer, school director, committee, superintendent, or teacher, who shall refuse or neglect to comply with the requirements of this act, or shall neglect or fail to make proper provisions for the instruction required, and in the manner specified by the first section of this act, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases.

Section 3. That no certificate shall be granted to any person to teach in the public schools of the District of Columbia or territories, after the first day of January, anno domini eighteen hundred and eighty-eight, who has not passed a satisfactory examination in physiology and hygiene, with special reference to the nature and the effects of alcoholic drinks and other narcotics upon the human system. [Act May 20, 1886].

OF PROVISIONS CONCERNING PARTICULAR ORGANIZED TERRITORIES.

Section.

- 1902. Boundaries of Idaho.
- 1905. Elections in Washington and Idaho.
- 1906. The delegate to congress must be a citizen of the United States.
- 1907. The judicial power, how vested in all the territories except Arizona.
- 1909. Writs of error to United States supreme court.
- 1910. Jurisdiction of district courts.
- 1914. Judges of supreme courts in Idaho and Montana to define judicial districts, etc.
- 1923. Extra session of legislative assembly in Washington, Idaho and Montana.

Section.

- 1927. Jurisdiction of justices of the peace.
- 1935. Contingent expenses of certain territories.
- 1940. In Washington, Idaho and Montana.
- 1941. No payment of salaries in certain territories until officers enter on their duties.
- 1943. In Idaho and Montana, mileage of members.
- 1945. In Idaho and Montana, seat of government.
- 1946. School lands in certain territories.
- 1949. Agencies, etc., continued.
- 1951. Disbursing officers in Washington, Idaho and Montana, to give security.

Section 1902. All that part of the territory of the United States, included within the following limits, to-wit: Beginning at a point in the middle channel of the Snake river, where the northern boundary of Oregon intersects the same; then follow down the channel of Snake river to a point opposite the mouth of the Kooskooskia or Clearwater river; thence due north to the forty-ninth parallel of latitude; thence east, along that parallel, to the thirty-ninth degree of longitude west of Washington; thence south along that degree of longitude to the crest of the Bitter Root mountains, thence southward along the crest of the Bitter Root mountains till its intersection with the Rocky mountains; thence southward along the crest of the Rocky mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west along that parallel, to the eastern boundary of the State of Oregon; thence north along that boundary, to the place of beginning, is created into a temporary government by the name of the Territory of Idaho.

Section 1905. The elections in the territories of Washington and Idaho for delegates to the house of representatives, shall be held bi-ennially, on the Tuesday next following the first Monday in November; and all elective territorial, county, and precinct officers shall hereafter be elected at the times herein specified, unless otherwise provided by legislation subsequent hereto, in either of such territories.

Section 1906. The delegate to the house of representatives from each of the territories of Washington, Idaho and Montana, must be a citizen of the United States.

Section 1907. The judicial power in New Mexico, Utah, Washington, Colorado, Dakota, Idaho, Montana, and Wyoming, shall be vested in a supreme court, district courts, probate courts and in justices of the peace.

Be it enacted, etc., That the probate courts of the Territory of Idaho, in their respective counties, in addition to their probate jurisdiction, be, and they are hereby, authorized to hear and determine all civil causes wherein the damage or debt claimed does not exceed the sum of five hundred dollars, exclusive of interest, and such criminal cases arising under the laws of the territory as do not require the intervention of a grand jury: *Provided,* That they shall not have jurisdiction in any matter in controversy, when the title, boundary, or right to the peaceable possession of land may be in dispute, or in chancery or divorce cases: And, provided further, That in all cases an appeal may be taken from any order, judgment, or decree of said probate courts to the district court. [Act December 13, 1870].

Section 1909. Writs of error and appeals from the final decisions of the supreme court of either of the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, shall be allowed to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property or the amount in controversy, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed to the supreme court of the United States from the decision of the supreme courts created by this title or of any judge thereof, or of the district courts created by this title, or of any judge thereof, upon writs of habeas corpus involving the question of personal freedom.

Be it enacted, etc., That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the supreme court of the District of Columbia, or in the supreme court of any of the territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars.

Section 2. That the preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute or of any authority exercised under the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute. [Act March 3, 1885].

Section 2. That the appellate jurisdiction of the supreme court of the United States over the judgment and decrees of said territorial courts, in cases of trial by jury, shall be exercised by writ of error, and in all other cases by appeal according to such rules and regulations as to form and modes of proceeding as the said supreme court have prescribed, or may hereafter prescribe: *Provided,* That on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the supreme court together with the transcript

of the proceedings and judgment or decree; but no appellate proceedings in said supreme court, heretofore taken upon any such judgment or decree, shall be invalidated by reason of being instituted by writ of error or by appeal: And provided further, That the appellate court may make any order in any case heretofore appealed, which may be necessary to save the rights of the parties and that this act shall not apply to cases now pending in the supreme court of the United States where the record has already been filed. [Act April 7, 1874].

Section 1910. Each of the district courts in the territories mentioned in the preceding section shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of the respective district courts, or so much thereof as is necessary, shall be appropriated to the trial of causes arising under such Constitution and laws; but writs of error and appeals in all such cases may be had to the supreme court of each territory, as in other cases.

Section 1914. The judges of the supreme courts of the Territories of Idaho and Montana, or a majority of them, shall, when assembled at their respective seats of government, define the judicial districts of each of such territories and assign the judges who may be appointed for each of such territories to the several districts; and shall also fix the times and places for holding courts in the several counties or subdivisions in each of such judicial districts, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less than two terms a year shall be held at each place of holding court in the Territory of Montana.

Section 1923. In each of the territories of Washington, Idaho and Montana, the governor shall have power to call the legislative assembly together by proclamation, on an extraordinary occasion, at any time.

Hereafter no extraordinary session of the legislature of any territory, whenever the same is now authorized by law, shall be called, until the reasons for the same have been presented to the president of the United States, and his approval thereof has been duly given. [Act June 22, 1874].

Section 1927. Justices of the peace in the Territories of Colorado, Washington, Idaho, Montana and Arizona, shall not have jurisdiction of any matter in controversy where the debt or sum claimed, exceeds three hundred dollars. [Act January 19, 1883].

Section 1935. There shall be appropriated annually, one thousand dollars, to be expended by the respective governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, including the salary of the clerk in the executive departments of those territories.

Section 1940. There shall be appropriated, respectively, for the Territories of Washington, Idaho and Montana, annually, a sufficient sum, to be expended by the secreatry of each territory herein

named upon an estimate to be made by the secretary of the treasury, to defray the expenses of the legislative assembly, and other incidental expenses. The governor and secretary of each territory above specified shall, in the disbursement of all moneys intrusted to them, be governed solely by the instructions of the secretary of the treasury, and shall semi-annually, account to such secretary for the manner in which such sums of money have been expended.

Section 1941. No payment of salary shall be made to the governor, secretary, chief justice, and associate justices of Washington, Idaho and Montana Territories until such officers have entered upon the duties of their respective appointments.

Section 1943. The members of the legislative assembly of Idaho and Montana Territories shall each receive four dollars for every twenty miles' travel in going to and returning from the sessions of their respective bodies, estimated according to the nearest usually traveled route.

Section 1945. The seat of government, when once fixed by the governor and legislative assembly of Idaho and Montana, respectively, shall not be at any time changed, except by an act of such assembly, for each territory, respectively, duly passed and approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

Section 1946. Sections numbered sixteen and thirty-six, in each township in the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming shall be reserved for the purpose of being applied to schools in the several territories herein named, and in the states and territories hereafter to be erected out of the same.

Section 1949. The existing agencies and superintendencies of the Indians inhabiting the Territories of Idaho and Montana shall be continued with the same powers and duties now prescribed by law, except that the president may, at his discretion, change the location of the office of such agents or superintendents.

Section 1951. All officers to be appointed by the president, by and with the advice and consent of the senate, for the Territories of Washington, Idaho, and Montana(who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give security at such time and in such manner as the secretary of the treasury may prescribe.

IDAHO ADMISSION BILL.

(Public 199).

AN ACT

TO PROVIDE FOR THE ADMISSION OF THE STATE OF IDAHO INTO THE UNION.

Whereas, The people of the Territory of Idaho did, on the 4th day of July, 1889, by a convention of delegates called and assembled for that purpose, form for themselves a Constitution, which Constitution was ratified and adopted by the people of said territory at an election held therefor on the first Tuesday in November, 1889, which Constitution is republican in form, and is in conformity with the Constitution of the United States; and

Whereas, Said convention and the people of said territory have asked the admission of said territory into the union of states on an equal footing with the original states in all respects whatever. Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the State of Idaho is hereby declared to be a state of the United States of America, and is hereby declared admitted into the union on an equal footing with the original states in all respects whatever; and that the Consitution which the people of Idaho have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed.

Section 2. That the said state shall consist of all the territory described as follows: Beginning at the intersection of the thirty-ninth meridian with the boundary line between the United States and the British possessions; then following said meridian south until it reaches the summit of the Bitter Root mountains; thence southeastward along the crest of the Bitter Root range and the Continental divide until it intersects the meridian of thirty-four degrees of longitude; thence southward on this meridian to the forty-second parallel of latitude; thence west on this parallel of latitude to its intersection with a meridian drawn through the mouth of the Owyhee river; north on this meridian to the mouth of the Owyhee river; thence down the mid-channel of the Snake river to the mouth of the Clearwater river; and thence north on the meridian which passes through the mouth of the Clearwater to the boundary line between the United States and the British possessions, and east on said boundary line to the place of beginning.

Section 3. That until the next general census, or until otherwise provided by law, said state shall be entitled to one representative in the house of representatives of the United States, and the election

of the representative to the fifty-first congress and fifty-second congress shall take place at the time, and be conducted and certified in the same maner as is provided in the Constitution of the state for the election of state, district, and other officers in the first instance.

The law of the Territory of Idaho for the registration of voters shall apply to the first election of state, district, and other officers held after the admission of the State of Idaho. County and precinct officers elected at the first election held after the admission of the State of Idaho shall assume the duties of their respective offices on the second Monday of January, 1891.

Section 4. That sections numbered 16 and 36 in every township of said state, and where such sections or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said state for the support of common schools, such indemnity lands to be selected within said state in such manner as the legislature may provide, with the approval of the secretary of the interior.

Section 5. That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, and such lands shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Section 6. That fifty sections of the unappropriated public lands within said state, to be selected and located in legal subdivisions as provided in section 4 of this act, shall be, and are hereby, granted to said state for the purpose of erecting public buildings at the capital of said state for legislative, executive, and judicial purposes.

Section 7. That 5 per cent. of the proceeds of the sales of public lands lying within said state which shall be sold by the United States subsequent to the admission of said state into the union, after deducting all the expenses incident to the same, shall be paid to the said state, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said state.

Section 8. That the lands granted to the Territory of Idaho by the act of February 18, 1881, entitled "an act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming, for university purposes," are hereby vested in the State of Idaho to the extent of the full quantity of 72 sections to said state, and any portion of said lands that may not have been selected by said Territory of Idaho may be selected by the said state; but said act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said state, and the income thereof be used

exclusively for university purposes. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said state, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

Section 9. That the penitentiary at Boise City, Idaho, and all lands connected therewith, and set apart and reserved therefor, and unexpended appropriations of money therefor, and the personal property of the United States now being in the Territory of Idaho which has been in use in said territory in the administration of the territorial government, including books and records and the property used at the constitutional convention which convened at Boise City in the month of July, 1889, are hereby granted and donated to the State of Idaho.

Section 10. That 90,000 acres of land, to be selected and located as provided in section 4 of this act, are hereby granted to said state for the use and support of an agricultural college in said state, as provided in the acts of congress making donations of lands for such purposes.

Section 11. That in lieu of the grant of land for purposes of internal improvement made to the new states by the eighth section of the act of September 4, 1841, which section is hereby repealed as to the State of Idaho, and in lieu of any claim or demand by the said state under the act of September 28, 1850, and section 2479 of the Revised Statutes, making a grant of swamp and overflowed lands to certain states, which grant is hereby declared, is not extended to the State of Idaho, and in lieu of any grant of saline lands to said state, the following grants of land are hereby made, to-wit: To the State of Idaho: For the establishment and maintenance of a scientific school, 100,000 acres; for state normal schools, 100,000; for the support and maintenance of the insane asylum, located at Blackfoot, 50,000 acres; for the support and maintenance of the state university, located at Moscow, 50,000; for the support and maintenance of the penitentiary, located at Boise City, 50,000 acres for other state, charitable, educational, penal and reformatory institutions, 150,000 acres. None of the lands granted by this act shall be sold for less than \$10 an acre.

Section 12. That the state of Idaho shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated, and disposed of exclusively for the purpose herein mentioned, in such manner as the legislature of the state may provide.

Section 13. That all mineral lands shall be exempted from the grants by this act. But if sections 16 and 36, or any subdivision, or portion of any smallest subdivision, thereof, in any township, shall be found by the department of the interior to be mineral lands, said state is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said state, in lieu thereof, for the use and the benefit of the common schools of said state.

Section 14. That all lands granted in quantity or as indemnity

by this act shall be selected, under the direction of the secretary of the interior, from the surveyer unreserved, and unappropriated public lands of the United States, within the limits of the state entitled thereto. And there shall be deducted from the number of acres of land donated by this act for the specific objects to said state the number of acres heretofore donated by congress to said terirtory for similar objects.

Section 15. That the sum of \$28,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, for defraying the expenses of said convention, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures, and for elections held therefor and thereunder. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

Section 16. That the said state shall constitute a judicial district, the name thereof to be the same as the name of the state and the circuit and district courts therefor shall be held at the capital of the state for the time being, and the said district shall, for judicial purposes, until otherwise provided, be attached to the ninth judicial circuit. There shall be appointed for said district one district judge, one United States attorney and one United States marshal. The judge of said district shall receive a yearly salary of \$3500, payable in four equal installments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in the said district, who shall keep their offices at the capital of said state. The regular terms of said courts shall be held in said district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for said district, and the judges thereof respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and the clerks of the circuit and district courts of said district, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the State of Oregon.

Section 17. That all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record from the supreme court of said territory, or that may hereafter lawfully be prosecuted upon any record from said court, may be heard and determined by said supreme court of the United States; and the mandate of execution or for further proceedings shall

be directed by the supreme court of the United States to the circuit or district court hereby established within the said state from or to the supreme court of such state, as the nature of the case may require. And the circuit, district, and state courts herein named shall, respectively, be the successors of the supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of the territory mentioned in this act, in any case arising within the limits of the proposed state prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States as they shall have had by law prior to the admission of said state into the union.

Section 18. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of said territory at the time of the admission into the union of the State of Idaho, and arising within the limits of such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings, and matters pending in the supreme or district courts of said territory at the time of the admission of such territory into the union, arising within the limits of said state, the courts established by such state shall, respectively, be the successors of said supreme and district territorial courts; and all the files, records, indictments, and proceedings relating to any such cases shall be transferred to such circuit, district, and state courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause, or proceeding now pending, or that prior to the admission of the state shall be pending, in any territorial court in said territory, shall abate by the admission of such state into the Union, but the same shall be transferred and proceeded with in the proper United States circuit, district, or state court, as the case may be: *Provided, however,* That in all civil actions, causes and proceedings in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceeding filed in the proper court; and, in the absence of such request, such cases shall be proceeded with in the proper state courts.

Section 19. That from and after the admission of said state into the Union, in pursuance of this act, the laws of the United States not locally inapplicable shall have the same force and effect within the said state as elsewhere within the United States.

Section 20. That the legislature of the said state may elect two senators of the United States as is provided by the Constitution of said state, and the senators and representatives of said state shall be entitled

to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States.

Section 21. That, until the state officers are elected and qualified under the provisions of the Constitution of said state, the officers of the Territory of Idaho shall discharge the duties of their respective offices under the Constitution of the state, in the manner and form as therein provided; and all laws in force, made by said territory, at the time of its admission into the Union, shall be in force in said state, except as modified or changed by this act or by the Constitution of the state.

Section 22. That all acts or parts of acts in conflict with the provisions of this act, whether passed by legislature of said territory or by congress, are hereby repealed.

Approved July 3, 1890.

CONSTITUTION OF THE STATE OF IDAHO.

Preamble.

- Art. I. Declaration of rights.
- Art. II. Distribution of Powers.
- Art. III. Legislative Department.
- Art. IV. Executive Department.
- Art. V. Judicial Department.
- Art. VI. Suffrage and elections.
- Art. VII. Finance and Revenue.
- Art. VIII. Public Indebtedness and Subsidies.
- Art. IX. Education and School Lands.
- Art. X. Public Insittutions.
- Art. XI. Corporations, Public and Private.
- Art. XII. Corporations, Municipal.
- Art. XIII. Immigration and Labor.
- Art. XIV. Militia.
- Art. XV. Wrater Rights.
- Art. XVI. Live Stock.
- Art. XVII. State Boundaries.
- Art. XVIII. Conuty Organization.
- Art. XIX. Apportionment.
- Art. XX. Amendments.
- Atr. XXI. Schedule and Ordinance.

CONSTITUTION.

Adopted by a Constitutional Convention held at Boise City, in the
Territory of Idaho, August 6, 1889.

PREAMBLE.

We, the people of the State of Idaho, grateful to Almighty God
for our freedom, to secure its blessings and promote our common
welfare, do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

Section.

- 1. Inalienable rights of all men.
- 2. All political power inherent in the people.
- 3. Constitution of the United States the supreme law.
- 4. Religious exercise and enjoyment.
- 5. Writ of habeas corpus guaranteed.

Section.

- 6. Bail.
- 7. Trial by jury.
- 8. Prosecutions by indictment or information.
- 9. Free speech and free press guaranteed.
- 10. Public assemblages.

Section.

- 11. Right to bear arms.
- 12. Military subordinate to civil power.
- 13. Right of speedy trial. Jeopardy.
- 14. Lands for irrigation and right of way a public use.
- 15. No imprisonment for debt.
- 16. Attainder and ex post facto laws prohibited.

Section.

- 17. Security of person and houses guaranteed.
- 18. Courts of justice open to every person.
- 19. Right of suffrage guaranteed.
- 20. No property qualification of electors.
- 21. Other rights not impaired.

Section 1. All men are by nature free and equal and have certain inalienable rights, among which are enjoying and defending life and liberty, acquiring, possessing and protecting property, pursuing happiness, and securing safety.

Section 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same whenever they may deem it necessary, and no special privileges or immunities shall ever be granted that may not be altered, revoked or repealed by the legislature.

Section 3. The State of Idaho is an inseparable part of the American union, and the Constitution of the United States is the supreme law of the land.

Section 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations; nor excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the state; nor to permit any person, organization, or association to directly or indirectly aid or abet, counsel or advise, any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the state, and the legislature shall provide by law for the punishment of such crimes.

Section 5. The privilege of the writ of habeas corpus shall not be suspended unless, in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law.

Cited in *Christensen v. Hollingsworth* (Idaho), 53 Pac. 211.

Section 6. All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Section 7. The right of trial by jury shall remain inviolate; but in civil actions three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony by the consent of both parties, expressed in open court, and in civil actions by the consent of the

parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open court.

The guaranty found in this section of the Constitution, that the right of trial by jury shall remain inviolate, was not intended to extend the right of trial by jury, but simply to secure that right as it existed at the date of the adoption of the Constitution.—Christensen v. Hol-

lingsworth (Idaho), 53 Pac. 211.

Such provision does not guaranty a jury trial in equitable action.—Christensen v. Hollingsworth (Idaho), 53 Pac. 211.

(For opinion on rehearing see 53 Pac. 271.)

Section 8. No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor, after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger: *Provided*, That a grand jury may be summoned upon the order of the district court in the manner provided by law: and, *Provided further*, That after a charge has been ignored by a grand jury, no person shall be held to answer or for trial therefor upon information of the public prosecutor.

PROCEEDINGS BY INFORMATION — VALIDITY — PRELIMINARY EXAMINATION: Section 8, article 1, of the Constitution of Idaho authorizes proceedings either by indictment or by information. That section in connection with the act of the legislature passed to carry into effect the provisions of said section, (see 1st Ses. Laws, p. 184), authorizes a proceeding by information only where the defendant has had a preliminary examination as provided in Chapter CCXXVII of the

Penal Code of Idaho, or had waived such examination, or is a fugitive from justice.—State v. Braithwaite, 2 Idaho, 857.

Preliminary examination: Penal Code, Chap. CCXXVII.

There is nothing in this section of our Constitution which prohibits the accused from waiving a preliminary examination.—State v. Larkins (Idaho), 47 Pac. 945.

Section cited in State v. Farris (Idaho), 51 Pac. 112.

Section 9. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.

Section 10. The people shall have the right to assemble in a peaceable manner to consult for their common good; to instruct their representatives, and to petition the legislature for the redress of grievances.

Section 11. The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law.

Section 12. The military shall be subordinate to the civil power; and no soldier in time of peace shall be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

Section 13. In all criminal prosecutions the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend in person and with counsel,

No person shall be twice put in jeopardy for the same offense; nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

The defendant in a criminal action cannot be compelled to testify; but, if he voluntarily takes the witness stand, and testifies in his own behalf, he may be cross-examined about any facts tes-

eified to on direct examination, or connected therewith.—*State v. Larkins* (Idaho), 47 Pac. 945.

Section cited in *State v. Mulkey* (Idaho), 59 Pac. 17.

Section 14. The necessary use of lands for the construction of reservoirs or storage basins, for the purposes of irrigation, or for the rights of way for the construction of canals, ditches, flumes or pipes to convey water to the place of use, for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.

Private property may be taken for public use, but not until a just compensation, to be ascertained in a manner prescribed by law, shall be paid therefor.

This provision is certainly sufficient to authorize the legislature to provide for the establishment of by-ways, or pent-ways, as they are sometimes called, or private roads, which are for the use of any one who may desire to use them.

The necessity for such private roads is apparent when it is stated that it

would be impossible to improve very many valuable tracts of land in this state which are not reached by public highways, unless this power existed. Such roads are therefore necessary to the complete development of the state. —*Latah County v. Peterson*, 2 Idaho, 1118.

Section 15. There shall be no imprisonment for debt in this state except in cases of fraud.

Section 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

"Ex post facto laws relate to penal and criminal proceedings which impose punishment or forfeiture, and not to civil proceedings, and are not applicable to civil laws, but to penal and criminal laws only, which affect private rights retrospectively."

Shepherd v. Grimmett, 2 Idaho, 1123 citing *Watson v. Mercer*, 8 Pet. 88; *Calder v. Bull*, 3 Dall. 386; *Fletcher v. Peck*, 6 Cranch, 87; *Ogden v. Saunders*,

12 Wheat. 266; *Satterlee v. Matthewson*, 2 Pet. 380.

The elector's oath enacted at the first session of the legislature of the State of Idaho, and approved February 25, 1891, held not to be an ex post facto law, not in the nature of a bill of attainder, and to be clearly within the constitutional power of the legislature.—*Shepherd v. Grimmett*, 2 Idaho, 1123.

Section 17. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause, shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

Section 18. Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or char-

acter, and right and justice shall be administered without sale, denial, delay, or prejudice.

Section 19. No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage.

Section 20. No property qualification shall ever be required for any person to vote or hold office except in school elections or elections creating indebtedness.

Section 21. This enumeration of rights shall not be construed to impair or deny other rights retained by the people.

ARTICLE II.

DISTRIBUTION OF POWERS

Section.

1. Distribution of powers.

Section 1. The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

A power or function vested in one department, body, board, or tribunal by express constitutional provision cannot be delegated by such department,

body, board, or tribunal to another department, body, board, or tribunal.—
Reynolds et al. v. Board of Com'rs. of Oneida Co. (Idaho), 59 Pac. 730.

ARTICLE III.

LEGISLATIVE DEPARTMENT.

Section.

1. Legislative power, where vested. Enacting clause.
2. Membership of senate and house.
3. Term of office.
4. First legislature, how apportioned.
5. Senatorial or representative district, how formed.
6. Qualifications of members.
7. Privileged from arrest, when.
8. Sessions.
9. Powers of each house respecting officers, members, etc.
10. Quorum. Organization must be effected, when.
11. Expulsion of members.
12. Secret sessions not allowed.
13. Journals. Yeas and nays, when entered.

Section.

14. Bills, where may originate.
15. Manner of passing laws.
16. Act shall embrace but one subject. Title.
17. Technical terms to be avoided.
18. Manner of amending act.
19. No local or special laws in certain enumerated cases.
20. Lottery cannot be authorized.
21. Bills and joint resolutions signed by whom.
22. When act takes effect.
23. Compensation of members. Mileage.
24. Temperance and morality.
25. Oath of office.

Section 1. The legislative power of the state shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the legislature of the State of Idaho."

Section 2. The senate shall consist of eighteen members and the house of representatives of thirty-six members. The legislature may increase the number of senators and representatives: *Provided*, The number of senators shall never exceed twenty-four, and the house of representatives shall never exceed sixty members. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law.

Section 3. The senators and representatives shall be elected for the term of two years, from and after the first day of December next following the general election.

Section 4. The members of the first legislature shall be apportioned to the several legislative districts of the state in proportion to the number of votes polled at the last general election for delegate to congress, and thereafter to be apportioned as may be provided by law; *Provided*, Each county shall be entitled to one representative.

See *Ballentine v. Willey*, 2 Idaho, 1208.

Section 5. A senatorial or represenattive district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating such districts.

Section 6. No person shall be a senator or representative who at the time of his election is not a citizen of the United States and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen.

Section 7. Senators and representatives, in all cases except for treason, felony or breach of the peace, shall be privileged from arrest during the session of the legislature, and in going to and returning from the same, and shall not be liable to any civil process during the session of the legislature, nor during the ten days next before the commencement thereof; nor shall a member for words uttered in debate in either house be questioned in any other place.

Section 8. The sessions of the legislature shall, after the first session thereof, be held biennially, at the capital of the state, commencing on the first Monday after the first day of January, and every second year thereafter, unless a different day shall have been appointed by law, and at other times when convened by the governor.

STATE LEGISLATURE — SESSIONS: Section 8, article 3, of the Constitution designates the different sessions of the state legislature as follows: First, the first session; second, sessions to be held biennially after the first session, commencing on the first Monday after the 1st day of January, and every second year thereafter; third, sessions convened by the governor.

STATE LEGISLATURE — COM-

PENSATION OF MEMBERS: The first paragraph of section 23, article 3, of the Constitution applies to the regular or biennial sessions only as to the per diem compensation of members, and the aggregate of per diem allowances.

The second paragraph of said section 23 fixes the per diem of each member, except the presiding officers, for the first session of said legislature, and for

sessions convened by the governor and allowances for the first session.—Good-
does not limit the aggregate per diem night v. Moody, 2 Idaho, 751.

Section 9. Each house when assembled shall choose its own officers, judge of the election, qualifications, and returns of its own members, determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall, without the concurrence of the other, adjourn for more than three days, nor to any other place than that in which it may be sitting.

Section 10. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as such house may provide. A quorum being in attendance, if either house fail to effect an organization within the first four days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the said four days until an organization shall have been effected.

Section 11. Each house may, for good cause shown, with the concurrence of two-thirds of all the members, expel a member.

Section 12. The business of each house, and of the committee of the whole, shall be transacted openly and not in secret session.

Section 13. Each house shall keep a journal of its proceedings; and the yeas and nays of the members of either house on any question, shall at the request of any three members present, be entered on the journal.

Each house is required by this section of the Constitution to keep a journal of its proceedings. This means that the journal shall show all of the proceedings of the house, and all of the steps taken in the passage of every bill. By reason of this provision the journal becomes not only the best evidence, but the exclusive evidence, of what was done by the house keeping such journal, and courts must impute to the record and statements in the

journal absolute verity. — Cohen v. Kingsley (Idaho), 49 Pac. 985.

Andrews v. Board County Commissioners (Idaho), 63 Pac. 592.

Before a court will assume to pass upon the constitutionality of the enactment of a statute by the legislature, it should have before it a copy of the original journals, showing the whole record of enactment, duly certified by the secretary of state, the proper and legal custodian of such records.—State v. Boise (Idaho), 51 Pac. 110.

Section 14. Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

Section 15. No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same shall have been read on three several days in each house previous to the final vote thereon: *Provided*, In case of urgency, two-thirds of the house where such bill may be pending may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal; and no bill

shall become a law without the concurrence of a majority of the members present.

STATUTES—ENACTMENT—CONSTITUTIONAL REQUIREMENTS—ENROLLED BILL—LEGISLATIVE JOURNALS—CONCLUSIVENESS:

1. The provisions of the Constitution requiring three several readings, the printing of bills, the aye and nay vote on final passage of any bill, are mandatory.

2. To ascertain whether or not the legislature, in the passage of a bill, complied with the requirements of the Constitution, the court may go back of the enrolled bill to see if the journals of both houses of the legislature show that the requirements of the Constitution were obeyed in the passage of the act in question.

3. The journals of both houses of the legislature must affirmatively show that the requirements of the Constitution in regard to the passage of any law were substantially followed by the legislature in the passage of an act the validity of which is questioned.

4. While the journals of both houses of the legislature are entitled to absolute verity, and cannot be contradicted, yet, if the journals fail to show that any step required by the Constitution in the passage of a law are taken, such failure to show that such step was taken is conclusive evidence that it was not taken.

5. Neither house of the legislature can suspend the provision of the Constitution which requires three readings on separate days in each house, except in case of urgency, and then only on an aye and nay vote by two-thirds of the house, voting with reference to only one bill then before such house.—Cohn v. Kingsley (Idaho), 49 Pac. 985.

Plaintiff applied for a writ of mandate to compel the defendants as the state board of medical examiners, to grant him license to practice medicine. It appeared affirmatively from the journals of the legislature that the act

creating said board was not read section by section in the senate on final passage, as required by the Constitution. Held, that the act creating such board is void; that the said board has no authority to grant the license, and the plaintiff is not entitled to the writ demanded.—Brown v. Collister, et al., State Board of Medical Examiners (Idaho), 51 Pac. 417.

We are of the opinion, from the context, from the conditions which the framers of the Constitution thought might arise, and from the apparent object which they had in view, that said proviso applies, and was only intended to apply, to the last clause preceding the proviso. It was not intended to authorize the legislature to dispense with the introduction of the proposed law by bill, nor was it intended to authorize the legislature to dispense with printing the bill.—Cohn v. Kingsley (Idaho), 49 Pac. 985.

It was the intention of the framers of the Constitution to require amendments that might be adopted to a pending bill to be read three times on several days, the same as original bills, or sections of the pending bill which is amended.... A bill which passes one house, and is materially changed by amendment by the other house, and then sent back to the house where it first originated, must go through the same procedure as to reading and final vote as if it was an original bill.—Cohn v. Kingsley (Idaho), 49 Pac. 985.

The state, having through each of its co-ordinate branches of government, repeatedly recognized Blaine county as a county and legal subdivision of the state, is estopped, after the lapse of nearly four years, from questioning the regularity of the passage of the act creating the county.—People ex rel. Attorney General v. Alturas County, et al. (Idaho), 55 Pac. 1067.

Section 16. Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

The power of the legislature to propose amendments to the constitution is not governed by the provisions of this section.

It is not essential that the subject of a proposed amendment to the Constitution should be expressed in the title. It is sufficient if such joint resolution clearly designates the section and ar-

ticle of the Constitution to be amended. Hays v. Hays (Idaho), 47 Pac. 732.

This section of the Constitution must be given a reasonable construction. It is sufficient if the act treats of but one general subject and that subject is expressed in the title. To hold that each subdivision of the subject and each and every of the ends and means necessary

for the accomplishment of the object of the act, must be specifically mentioned in the title, would greatly embarrass legislation and accomplish no legiti-

mate purpose.—State v. Doherty, 2 Idaho, 1105.

Section cited in Ballentine v. Willey, 2 Idaho, 1213.

Section 17. Every act or joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms.

Section 18. No act shall be revised or amended by mere reference to its title, but the section as amended shall be set forth and published at full length.

AMENDMENT OF STATUTES:
An act of the first legislative assembly of the State of Idaho, amending the revised statutes of Idaho territory and the 15th session laws, changing the

word "territory" to "state" and the word "comptroller" to "auditor," is not in conflict with the Constitution.—Gilbert v. Moody, 2 Idaho, 747.

Section 19. The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and constables.

For the punishment of crimes and misdemeanors.

Regulating the practice of the courts of justice.

Providing for a change of venue in civil or criminal actions.

Granting divorces.

Changing the names of persons or places.

Authorizing the laying out, opening, altering, maintaining, working on, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, or any public grounds not owned by the state.

Summoning and impaneling grand and trial juries, and providing for their compensation.

Regulating county and township business, or the election of county and township officers.

For the assessment and collection of taxes.

Providing for and conducting elections, or designating the place of voting.

Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Extending the time for collection of taxes.

Giving effect to invalid deeds, leases or other instruments.

Refunding money paid into the state treasury.

Releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any person or corporation, in this state, or any municipal corporation therein.

Declaring any person of age, or authorizing any minor to sell, lease or encumber his or her property.

Legalizing as against the state the unauthorized or invalid act of any officer.

Exempting property from taxation.

Changing county seats; unless the law authorizing the change shall require that two-thirds of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed: *Provided*, That the power to pass a special law shall cease

as long as the legislature shall provide for such change by general law : *Provided further*, That no special law shall be passed for any one county oftener than once in six years.

Restoring to citizenship persons convicted of infamous crimes.

Regulating the interest on money.

Authorizing the creation, extension or impairing of liens.

Charatering or licensing ferries, bridges or roads.

Remitting fines, penalties or forfeitures.

Providing for the management of common schools.

Creating offices or prescribing the powers and duties of officers in counties, cities, townships, election districts or school districts, except as in this Constitution otherwise provided.

Changing the law of descent or succession.

Authorizing the adoption or legitimization of children.

For limitation of civil or criminal actions.

Creating any corporation.

Creating, increasing or decreasing fees, percentages, or allowances of public officers during the term for which said officers are elected or appointed.

Section 20. The legislature shall not authorize any lottery or gift enterprise under any pretense or for any purpose whatever.

Section 21. All bills or joint resolutions passed shall be signed by the presiding officers of the respective houses.

Section 22. No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.

Section 23. Each member of the legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session, but such pay shall not exceed for each member, except the presiding officers, in the aggregate three hundred dollars for per diem allowances for any one session; and shall receive each the sum of ten cents per mile each way by the usual traveled route.

When convened in extra session by the governor, they shall each receive five dollars per day; but no extra session shall continue for a longer period than twenty days, except in case of the first session of the legislature. They shall receive such mileage as is allowed for regular sessions. The presiding officers of the legislature shall each in virtue of his office receive an additional compensation equal to one-half his per diem allowance as a member: *Provided*, That whenever any member of the legislature shall travel on a free pass in coming to or returning from the session of the legislature, the number of miles actually traveled on such pass shall be deducted from the mileage of such member.

See *Goodnight v. Moody*, 2 Idaho, 751.

Section 24. The first concern of all good government is the virtue and sobriety of the people, and the purity of the home. The

legislature should further all wise and well directed efforts for the promotion of temperance and morality.

Section 25. The members of the legislature shall, before they enter upon the duties of their respective offices, take or subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of Idaho, and that I will faithfully discharge the duties of senator (or representative, as the case may be) according to the best of my ability." And such oath may be administered by the governor, secretary of state, or judge of the supreme court, or presiding officer of either house.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

Section.

1. Executive officers. Term. Residence.
2. How elected.
3. Qualifications.
4. Governor is commander-in-chief.
5. Supreme executive power vested in governor.
6. Governor to appoint officers, when.
7. Board of pardons. Respites and reprieves.
8. Governor to require and give written statements.
9. Extraordinary sessions of legislature.
10. Governor's action on bills passed by legislature.

Section.

11. May disapprove items of appropriation bill. Legislative action.
12. When lieutenant-governor to act as governor.
13. Lieutenant-governor president of senate. President pro tempore.
14. President pro tempore to act as governor, when.
15. Great seal of the State of Idaho.
16. Grants and permissions, authority.
17. Executive officers to keep accounts. Reports.
18. Board of state prison commissioners. Board of examiners.
19. Salaries of executive officers. Fees.

Section 1. The executive department shall consist of a governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general and superintendent of public instruction, each of whom shall hold his office for two years beginning on the first Monday in January next after his election, except as otherwise provided in this Constitution. The officers of the executive department, excepting the lieutenant-governor, shall during their term of office, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law.

Section 2. The officers named in section one of this article shall be elected by the qualified electors of the state at the time and places of voting for members of the legislature, and the persons, respectively, having the highest number of votes for the office voted for shall be elected; but if two or more shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislature at its next regular session, shall forthwith, by joint ballot, elect one of such persons for said office. The returns of election for the officers named in section one shall be made in such manner as may be prescribed by law, and all contested elections of the

same, other than provided for in this section, shall be determined as may be prescribed by law.

Section 3. No person shall be eligible to the office of governor or lieutenant-governor unless he shall have attained the age of thirty years at the time of his election; nor to the office of secretary of state, state auditor, superintendent of public instruction, or state treasurer unless he shall have attained the age of twenty-five years; nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the supreme court of the State or Territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the state or territory two years next preceding his election.

Section 4. The governor shall be commander-in-chief of the military forces of the state, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion.

If hundreds of men can arm themselves and destroy vast properties, and kill and injure citizens, thus defeating the ends of government, and the government be unable to take all needful and necessary steps to restore law and maintain order, the state will then be impotent, if not entirely destroyed, and anarchy placed in its stead. - It is no argument to say that the executive was not applied to by any county officer of Shoshone county to proclaim said county to be in a state of insurrection, and for this reason the proclamation was

without authority. The recitals in the proclamation show the existence of one of two conditions, viz: that the county officers of said county, whose duty it was to make said application, were either in league with the insurrectionists, or else, through fear of the latter, said officers refrained from doing their duty. Under the circumstances, it was the duty of the executive to act without any application from any county officer of Shoshone county. — In re Boyle (Idaho), 57 Pac. 706.

Section 5. The supreme executive power of the state is vested in the governor, who shall see that the laws are faithfully executed.

Section 6. The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by this Constitution, or which may be created by law and whose appointment or election is not otherwise provided for. If, during the recess of the senate, a vacancy occurs in any state or district office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of a justice of the supreme or district court, secretary of state, state auditor, state treasurer, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law.

Section 7. The governor, secretary of state, and attorney general shall constitute a board to be known as the board of pardons.

Said board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose, in all cases of offenses against the state except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board and the manner in which application shall be made and regulate the proceedings thereon, but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.

The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the legislature, at each regular session, each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon, or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the board made thereto.

Section 8. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time, under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The governor shall at the commencement of each session, and from time to time, by message, give to the legislature information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the legislature a statement, with vouchers, of the ex-

penditures of all moneys belonging to the state and paid out by him. He shall also at the commencement of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the state.

Section 9. The governor may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it; but when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation; but may provide for the expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the senate in extraordinary session for the transaction of executive business.

Cited in *Goodnight v. Moody*, 2 Idaho, 755.

Section 10. Every bill passed by the legislature shall, before it becomes a law, be presented to the governor. If he approve he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journals and proceed to reconsider the bill. If then two-thirds of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members present in that house, it shall become a law, notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the governor to the legislature within five days (Sundays excepted) after it shall have been presented to him shall become a law in like manner, as if he had signed it, unless the legislature shall, by adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the secretary of state within ten days after such adjournment (Sundays excepted) or become a law.

Section 11. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, and the part or parts approved shall become a law and the item or items disapproved shall be void unless enacted in the manner following: If the legislature be in session, he shall within five days transmit to the house within which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Section 12. In case of the failure to qualify, the impeachment, or conviction of treason, felony, or other infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office for the residue of the

term, or until the disability shall cease, shall devolve upon the lieutenant-governor.

Section 13. The lieutenant-governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant-governor from any cause which applies to the governor, or when he shall hold the office of governor, then the president pro tempore of the senate shall perform the duties of the lieutenant-governor until the vacancy is filled or the disability removed.

Section 14. In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of treason, felony or other infamous crime, or disqualification from any cause, of both governor and lieutenant-governor, the duties of the governor shall devolve upon the president of the senate pro tempore, until such disqualification of either the governor or lieutenant-governor be removed, or the vacancy filled; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

Section 15. There shall be a seal of this state, which shall be kept by the secretary of state and used by him officially, and shall be called "The Great Seal of the State of Idaho." The seal of the Territory of Idaho, as now used, shall be the seal of the state until otherwise provided by law.

Section 16. All grants and permissions shall be in the name and by the authority of the State of Idaho, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

Section 17. An account shall be kept by the officers of the executive department and of all public institutions of the state of all moneys received by them severally, from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislature, make full and complete reports of their official transactions to the governor, who shall transmit the same to the legislature.

Section 18. The governor, secretary of state, and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prison as may be prescribed by law. They shall also constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the state, except salaries and compensation of officers

fixed by law, shall be passed upon by the legislature without first having been considered and acted upon by said board.

Cited in *Winters et al. v. Ramsey* (Idaho), 51 Pac. 614.
(Idaho), 39 Pac. 193; *Pike v. Steunen-*

Section 19. The governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction shall quarterly as due, during their continuance in office, receive for their services compensation, which for the term next ensuing after the adoption of this Constitution, is fixed as follows: Governor, three thousand dollars per annum; secretary of state, one thousand eight hundred dollars per annum; state auditor, one thousand eight hundred dollars per annum; state treasurer, one thousand dollars per annum; attorney general, two thousand dollars per annum; and superintendent of public instruction, one thousand five hundred dollars per annum. The lieutenant-governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the session of the legislature. The compensations enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office.

No officer named in this section shall receive for the performance of any official duty any fee for his own use, but all fees fixed by law for the performance by either of them of any official duty shall be collected in advance and deposited with the state treasurer quarterly to the credit of the state. The legislature may, by law, diminish or increase the compensation of any or all of the officers named in this section, but no diminution or increase shall affect the salaries of the officers then in office during their term: *Provided, however,* The legislature may provide for the payment of actual and necessary expenses to the governor, lieutenant-governor, secretary of state, attorney general, and superintendent of public instruction, while traveling within the state in the performance of official duty.

It is part of the official duty of the secretary of state to prepare the copies of the laws and journals for the printer. Where he has received fees for making such copies, such fees are required to

be paid into the state treasury by the secretary of state under the provisions of this section of the Constitution.—*State ex rel. Anderson v. Lewis* (Idaho), 52 Pac. 163.

ARTICLE V.

JUDICIAL DEPARTMENT.

Section.

1. Forms of action.
2. Judicial power, where vested.
3. Court for trial of impeachments.
4. Power of impeachment. Conviction.
5. Treason.
6. Justices of supreme court, generally.
7. Justices prohibited from holding other office.
8. Terms of supreme court.
9. Jurisdiction of supreme court.

Section.

10. Claims against the state: decision.
11. Judicial districts of state. Terms of court.
12. Residence of district judge. Court outside his district.
13. Power of legislature respecting courts.
14. Special courts in cities and towns.
15. Clerk of supreme court.
16. Clerk of district court.
17. Salaries of justices and judges.
18. Prosecuting attorney.

Section.

19. Vacancies, how filled.
20. Jurisdiction of district court.
21. Probate courts.
22. Justices of the peace.
23. Qualifications of district judge.
24. Judicial district enumerated.

Section.

25. Defects in law to be reported by judges.
26. Laws relating to courts shall be general and uniform.
27. Legislature may increase or diminish compensations.

Section 1. The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, are hereby prohibited; and there shall be in this state but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the state as a party against a person charged with a public offense for the punishment of the same, shall be termed a criminal action.

Feigned issues are prohibited, and the fact at issue shall be tried by order of court before a jury.

Staples et al. vs. Rossi et al. (Idaho), 65 Pac. 67.

Section 2. The judicial power of the state shall be vested in a court for the trial of impeachments, a supreme court, district courts, probate courts, courts of justices of the peace, and such other courts inferior to the supreme court as may be established by law for any incorporated city or town.

Section 3. The court for the trial of impeachments shall be the senate. A majority of the members elected shall be necessary to a quorum, and the judgment shall not extend beyond removal from, and disqualification to hold office in this state; but the party shall be liable to indictment and punishment according to law.

Section 4. The house of representatives solely shall have the power of impeachment. No person shall be convicted without the concurrence of two-thirds of the senators elected. When the governor is impeached the chief justice shall preside.

Section 5. Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture of estate.

Section 6. The supreme court shall consist of three justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. The justices of the supreme court shall be elected by the electors of the state at large. The terms of office of the justices of the supreme court, except as in this article otherwise provided, shall be six years. The justices of the supreme court shall, immediately after the first election under this Constitution, be selected by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years. The lots shall be drawn by the justices of the supreme court, who shall, for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to by the secretary of state

and filed in his office. The justice having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be the chief justice, and shall preside at all terms of the supreme court, and, in case of his absence, the justice having in like manner the next shortest term to serve shall preside in his stead.

Section 7. No justice of the supreme court shall be eligible to any other office of trust or profit under the laws of this state during the term for which he was elected.

Section 8. At least four terms of the supreme court shall be held annually; two terms at the seat of state government, and two terms at the city of Lewiston, in Nez Perce county. In case of epidemic, pestilence, or destruction of court houses, the justices may hold the terms of the supreme court provided by this section at other convenient places, to be fixed by a majority of said justices. After six years the legislature may alter the provisions of this section.

Section 9. The supreme court shall have jurisdiction to review, upon appeal, any decision of the district courts, or the judges thereof. The supreme court shall also have original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction.

Staples et al. v. Rossi et al. (Idaho)
65 Pac. 67.

Where the statutes fail to provide for an appeal from a final judgment of the district court to the supreme court, the supreme court will entertain a writ of error, or other proper writ, to bring such judgment before it for review, under the provision of Section 9 of Article 5 of the state Constitution.—*State v. Reed (Idaho)*, 32 Pac. 202.

Section 9, Art. 5 of the Constitution, which provides "that the supreme court

shall have jurisdiction to review upon appeal, any decision of the district courts, or the judges thereof," does not give the state the right to appeal from a judgment in favor of the defendant in a criminal action.—*State v. Ridenbaugh (Idaho)*, 51 Pac. 750.

Section cited in *Williams v. Lewis (Idaho)*, 54 Pac. 619; *Tootle v. French*, 2 Idaho, 746; *First National Bank of Pocatello v. C. Bunting & Co., Bankers, (Idaho)*, 63 Pac. 694.

Section 10. The supreme court shall have original jurisdiction to hear claims against the state, but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the legislature for its action.

Under the provisions of this section the supreme court has rendered recommendatory decisions in the following cases:

Wisconsin Marine & Fire Insurance Co. Bank v. State, 51 Pac. 983; *Geo. H.*

Fuller Desk Co. v. State, 55 Pac. 857; *Winters et al. v. State*, 47 Pac. 855.

Section also cited in *Payne v. State Board of Wagon Road Com'rs (Idaho)*, 39 Pac. 548; *Pike v. Steunenberg (Idaho)*, 51 Pac. 614.

Section 11. The state shall be divided into five judicial districts, for each of which a judge shall be chosen by the qualified electors thereof, whose terms of office shall be four years. And there shall be held a district court in each county, at least twice in each year, to continue for such time in each county as may be prescribed by law; but the legislature may reduce or increase the number of districts, district judges, and district attorneys. This section shall not be con-

strued to prevent the holding of special terms under such regulations as may be provided by law.

Section 12. Every judge of the district court shall reside in the district for which he is elected. A judge of any district court may hold a district court in any county at the request of the judge of the district court thereof, and upon the request of the governor it shall be his duty to do so; but a cause in the district court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, and sworn to try the cause.

This section does not authorize the appointment of a non-resident of the state as judge pro tem. *Bramwell v. Guheen*, 2 Idaho, 1070.

Section 13. The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government but the legislature shall provide a proper system of appeals and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the supreme court, so far as the same may be done without conflict with this Constitution.

Section 14. The legislature may provide for the establishment of special courts for the trial of misdemeanors in incorporated cities and towns where the same may be necessary.

Section 15. The clerk of the supreme court shall be appointed by the court, and shall hold his office during the pleasure of the court. He shall receive such compensation for his services as may be provided by law.

Section 16. A clerk of the district court for each county shall be elected by the qualified electors thereof at the time and in the manner prescribed by law for the election of members of the legislature, and shall hold his office for the term of four years.

CLERK OF COURT—COMPENSATION — SELF-OPERATIVE STATUTES: Section 16 of Article 5 of the Constitution provides for the election of a clerk of the district court for each county. Section 6 of Article 18 provides that the clerk of the district court shall be ex-officio auditor and recorder. Section 7 of the same article provides that the compensation of this officer for all the duties he shall perform as such officer shall not exceed \$3000.00, or fall below \$500.00 in any one year. Held, that

these sections are self-operative; that the clerk of the district court as such clerk and as auditor and recorder, for the performance of all his duties therein, cannot receive, for his own use, a greater sum than \$3000.00 for any one year, and such compensation must be derived from fees and commissions.—*Hillard v. Shoshone Co.* 2 Idaho, 843.

Note: The system of paying salaries by fees was abolished by amendment to the Constitution at the November election, 1898.

Section 17. The salary of the justices of the supreme court, until otherwise provided by the legislature, shall be three thousand dollars each per annum, and the salary of the judges of the district court, until otherwise provided by the legislature, shall be three thousand dollars each per annum, and no justice of the supreme court, or judge of the district court, shall be paid his salary, or any part thereof, unless he shall have first taken and subscribed an oath

that there is not in his hands any matter in controversy not decided by him which had been finally submitted for his consideration and determination, thirty days prior to the taking and subscribing such oath.

Section 18. (2nd Amendment). A prosecuting attorney shall be elected for each organized county in the state, by the qualified electors of such county, and shall hold office for the term of two years, and shall perform such duties as may be prescribed by law; he shall be a practicing attorney at law, and a resident and elector of the county for which he is elected. He shall receive as compensation for his services a sum not less than five hundred dollars per annum nor more than fifteen hundred dollars per annum, to be fixed by the board of commissioners of the county at its regular session in July next preceding any general election, and to be paid in quarterly installments out of the county treasury.

As amended at the general election held Nov. 3rd, 1896.

The original section read as follows:

Section 18. A district attorney shall be elected for each judicial district by the qualified electors thereof, who shall hold office for the term of four years, and perform such duties as may be prescribed by law. He shall be a practicing attorney at law and a resident and elector of the district. He shall receive as compensation for his services twenty-five hundred dollars per annum.

The amendment to Section 18, Art. 5, creating the office of prosecuting attorney, does not go into full operation

until the close of the term of office for which district attorneys were elected at the general election of 1894.

Said amendment is not self-executing. It requires legislation to prescribe the duties of the prosecuting attorney, the board of county commissioners to fix his compensation, and the qualified electors to elect such officers at the next general election. The law prescribes the date on which the county officers so elected shall take possession of their offices, and that is the date said amendment goes into full operation.—Hays v. Hays (Idaho), 47 Pac. 732.

Section 19. All vacancies occurring in the offices provided for by this article of the Constitution shall be filled as provided by law.

Section 20. The district court shall have original jurisdiction in all cases, both at law and in equity, and such appellate jurisdiction as may be conferred by law.

Section 21. The probate courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, and appointment of guardians; also jurisdiction to hear and determine all civil cases wherein the debt or damage claimed does not exceed the sum of five hundred dollars, exclusive of interest, and concurrent jurisdiction with justices of the peace in criminal cases.

Section 22. In each county of this state there shall be elected justices of the peace as prescribed by law. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of the property or the amount in controversy exceeds the sum of three hundred dollars, exclusive of interest, nor where the boundaries or title to any real property shall be called into question.

This section does not extend the jurisdiction of justices of the peace to the sum of \$300 exclusive of interest. It is, however, a limitation on the legislature, and prohibits the fixing of said jurisdiction beyond the sum of \$300 exclusive of interest.—*Quayle v. Glenn et al.* (Idaho), 57 Pac. 308.

Section 23. No person shall be eligible to the office of district judge unless he be learned in the law, thirty years of age, and a citizen of the United States, and shall have resided in the state or territory at least two years next preceding his election, nor unless he shall have been at the time of his election, an elector in the judicial district for which he is elected.

Cited in *Shepherd v. Grimmer*, 2 Idaho, 1130.

Section 24. Until otherwise provided by law, the judicial districts shall be five in number, and constituted of the following counties, viz: First district, Shoshone and Kootenai; second district, Latah, Nez Perce and Idaho; third district, Washington, Ada, Boise and Owyhee; fourth district, Cassia, Elmore, Logan and Alturas; fifth district, Bear Lake, Bingham, Oneida, Lemhi and Custer.

Section 25. The judges of the district court shall, on or before the first day of July in each year, report in writing to the justices of the supreme court, such defects or omissions in the laws as their knowledge and experience may suggest, and the justices of the supreme court shall, on or before the first day of December of each year, report in writing to the governor, to be by him transmitted to the legislature, together with his message, such defects and omissions in the Constitution and laws as they may find to exist.

Section 26. All laws relating to courts shall be general and of uniform operation throughout the state, and the organized judicial powers, proceedings, and practices of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform.

Section 27. The legislature may, by law, diminish or increase the compensation of any or all of the following officers, to-wit: Governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, superintendent of public instruction, commissioner of immigration and labor, justices of the supreme court, and judges of the district courts and district attorneys, but no diminution or increase shall affect the compensation of the officer then in office during his term: *Provided, however,* That the legislature may provide for the payment of actual and necessary expenses of the governor, secretary of state, attorney general, and superintendent of public instruction incurred while in performance of official duty.

ARTICLE VI.

SUFFRAGE AND ELECTIONS.

Section.

1. Secret ballot guaranteed.
2. Qualifications of electors.
3. Who disqualified from voting.

Section.

4. Legislature may prescribe additional qualifications.
5. Residence not gained or lost by employe, when.

Section 1. All elections by the people must be by ballot. An absolutely secret ballot is hereby guaranteed, and it shall be the duty of the legislature to enact such laws as shall carry this section into effect.

Section 2. Except as in this article otherwise provided, every male or female citizen of the United States, twenty-one years old, who has actually resided in this state or territory for six months, and in the county where he or she offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the legislature, women who have the qualifications prescribed in this article may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho Territory.

As amended at the general election held November 3rd, 1896.

The original section read as follows:

Section 2. Except as in this article otherwise provided, every male citizen of the United States, twenty-one years old, who has actually resided in the state or territory for six months, and in the county where he offers to vote, thirty days next preceding the day of

election, if registered as provided by law, is a qualified elector; and until otherwise provided by the legislature, women who have the qualifications prescribed in this article, may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho Territory.

Wilson v. Bartlett (Idaho), 62 Pac. 416.

Section 3. No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as a patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of or contributes to the support, aid, or encouragement of any order, organization, association, corporation or society, which teaches, advises, counsels, encourages or aids any person to enter into bigamy, polygamy, or such patriarchal or plural marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state; nor shall Chinese, or persons of Mongolian descent, not born in the United States, nor Indians not taxed, who have not severed their tribal relations and adopted the habits of civilization, either vote, serve as jurors, or hold any civil office.

DISQUALIFICATIONS OF VOTERS—CONSTITUTIONAL LAW—RELIGIOUS PRACTICES: Rev. St. Idaho, Secs. 501, 504, which provide that no person "who is a bigamist or

polygamist, or who teaches, advises, counsels, or encourages any person or persons to become bigamists or polygamists, * * * or to enter into what is known as plural or celestial mar-

riage, or who is a member of any order * * * which teaches, advises, counsels, or encourages its members or devotees, or any other persons to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a rite or ceremony of such order * * * or otherwise, is permitted to vote at any election, or to hold any position or office of honor, trust or profit in this territory," and require every person desiring to register as a voter to take an oath that he does not belong to such an order, are valid, and not unconstitutional, as being a "law respecting an establishment of religion."

Section 4. The legislature may prescribe qualifications, limitations, and conditions for the right of suffrage additional to those prescribed in this article, but shall never annul any of the provisions in this article contained.

The right of suffrage is not a natural right, nor is it an unqualified personal right. It is a right derived from constitutions and statutes. It is regulated by the states, and their power to fix the qualifications of voters is limited only by the provisions of the fifteenth amendment to the Constitution.

Shepherd v. Grimmett, 2 Idaho, 1123, citing Huber v. Reiley, 53 Pa. St. 115; Ridley v. Sherbrook, 3 Colo. 569; Anderson v. Baker, 23 Md. 531; Brightly, Elect. Cas. 27; McCrary, Elect. (2d Ed.) p. 45, Sec. 3; Paine, Elect. Sec. 2.

Participation in the elective franchise

Section 5. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this state, or of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, nor while a student of any institution of learning, nor while kept at any alms house or other asylum at the public expense.

Powell v. Spackman (Idaho), 65 Pac.

The statute of Idaho is not rendered nugatory by act congress March 22, 1882 (22 St. 31), which declares that "no polygamist, bigamist, or any person cohabiting with more than one woman * * * in any territory * * * shall be entitled to vote at any election held in any such territory * * * or be eligible for election or appointment to, or be entitled to hold, any office or place of public trust," etc., in any such territory, as this does not cover the same subject. (On appeal district court 3rd judicial district (Idaho), Davis v. Beason, 133 U. S. 333, (10 Sup. Court, p. 299), 33 L. ed. 637.)

is a privilege, rather than a right, and it is granted or denied upon grounds of general policy.—Cooley, Const. Line 589, cited Shepherd v. Grimmett, 2 Idaho, 1129.

The right of suffrage is a political right, conferred by the Constitution or the laws of the state, and has ever been regarded as exclusively under state control. It may be granted or withheld, or given subject to such restrictions as the majority of those in whom the sovereignty resides may deem conducive to the public welfare.—Shepherd v. Grimmett, 2 Idaho, 1123.

ARTICLE VII.

FINANCE AND REVENUE

Section.

1. Fiscal year.
2. Legislature shall provide revenue by taxation.
3. "Property" shall be defined by law.
4. Public property exempt from taxation.
5. Taxes shall be uniform. Exemptions.
6. Municipal corporations to impose their own taxes.
7. Taxes for state purposes to be paid in full.
8. Corporate property must be taxed.
9. Maximum limit of taxation.

Section.

10. Making profit from public money prohibited.
11. Expense must not exceed appropriation.
12. Boards of equalization, state and county.
13. Money, how drawn from treasury.
14. County money, how drawn from treasury.
15. Legislature to provide system of county finance.
16. Legislature to carry out provisions of this article.

Section 1. The fiscal year shall commence on the second Monday of January in each year, unless otherwise provided by law.

Section 2. The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax (both upon natural persons and upon corporations, other than municipal, doing business in this state); also a per capita tax: *Provided*, The legislature may exempt a limited amount of improvements upon land from taxation.

Section 3. The word "property" as herein used shall be defined and classified by law.

Section 4. The property of the United States, the state, counties, towns, cities and other municipal corporations and public libraries shall be exempt from taxation.

Section 5. All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: *Provided*, That the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of territory, shall continue until changed by the legislature of the state: *Provided, further*, That duplicate taxation of property for the same purpose during the same year, is hereby prohibited.

The provisions of Sections 2 and 5, Article 7 of the Constitution of Idaho, requiring equality and uniformity of taxation upon the same class of subjects, is not applicable to the license tax imposed by Section 4 of an act entitled, "An act to regulate the sale of intoxicating liquors." 1st Sess. Laws, Idaho, p. 34. Said act is a police regulation.

POLICE REGULATIONS: As a police regulation the price of licenses may

be graduated by some standard provided such standard is reasonable, fair and just.—*State v. Doherty*, 2 Idaho, 1105.

This provision of the Constitution is self acting and applies to all officers and boards that have anything to do with the levy and assessment of taxes upon all classes of property.—*Orr v. State Board of Equalization*, 2 Idaho, 923-930.

Section 6. The legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may by law invest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

Section 7. All taxes levied for state purposes shall be paid into the state treasury, and no county, city, town, or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for state purposes.

All taxes levied and collected for state purposes must be paid into the state treasury, without any deductions for commissions or other charges.—*Cunningham, County Auditor, v.*

Moody, State Auditor, 2 Idaho, 862. Affirmed *Guheen, Assessor and Tax Collector, v. Curtis, County Treasurer*, 2 Idaho, 1151; *Wickersham v. Manion et al.* (Idaho), 36 Pac. 700.

This section of the Constitution is self-acting, and goes into effect without any legislation.—Cunningham, County

Auditor, v. Moody, State Auditor, 2 Idaho, 862.

Section 8. The power to tax corporations or corporate property, both real and personal, shall never be relinquished or suspended, and all corporations in this state, or doing business therein, shall be subject to taxation for state, county, school, municipal and other purposes, on real and personal property owned or used by them, and not by this Constitution exempted from taxation within the territorial limits of the authority levying the tax.

Section 9. The rate of taxation of real and personal property for state purposes shall never exceed ten (10) mills on each dollar of assessed valuation; and if the taxable property in the state shall amount to fifty million (50,000,000) dollars, the rate shall not exceed five (5) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to one hundred million (100,000,000) dollars, the rate shall not exceed three (3) mills on each dollar of valuation; and whenever the taxable property of the state shall amount to three hundred million (300,000,000) dollars, the rate shall never thereafter exceed one and one-half ($1\frac{1}{2}$) mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

Section 10. The making of profit, directly or indirectly, out of state, county, city, town, township, or school district money, or using the same for any purpose, not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

Section 11. No appropriation shall be made nor any expenditure authorized by the legislature, whereby the expenditure of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure unless the legislature making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section nine (9) of this article, to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war.

Section 12. There shall be a state board of equalization, consisting of the governor, secretary of state, attorney general, state auditor, and state treasurer, whose duties shall be prescribed by law. The board of county commissioners for the several counties of the state, shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county, under such rules and regulations as shall be prescribed by law.

Section 13. No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

Cited in *Kingsbury v. Anderson* 2 Idaho, 750.
(Idaho), 51 Pac. 744; *Gilbert v. Moody*,

Section 14. No money shall be drawn from the county treasuries except on the warrant of a duly authorized officer, in such manner and form as shall be prescribed by the legislature.

Section 15. The legislature shall provide by law, such a system of county finance, as shall cause the business of the several counties to be conducted on a cash basis. It shall also provide that whenever any county shall have any warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, the county commissioners, in addition to other taxes provided by law, shall levy a special tax, not to exceed ten (10) mills on the dollar, of taxable property, as shown by the last preceding assessment, for the creation of a special fund for the redemption of said warrants; and after the levy of such special tax, all warrants issued before such levy, shall be paid exclusively out of said fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to said redemption fund.

One of the methods clearly authorized by this section of the Constitution for bringing the business of the counties to a cash basis was and is by issuing bonds for the purpose of taking up outstanding warrants and refunding bonds.—*Bannock County v. C. Bunting & Co.* (Idaho), 37 Pac. 277.

Section 16. The legislature shall pass all laws necessary to carry out the provisions of this article.

ARTICLE VIII.

PUBLIC INDEBTEDNESS AND SUBSIDIES.

Section.

1. Limitation on public indebtedness.
2. Credit of the state shall not be given or loaned.

Section.

3. County, etc., not to incur indebtedness exceeding revenue.
4. County, etc., shall not loan or give its credit.

Section 1. The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, exclusive of the debt of the territory at the date of its admission as a state, exceed the sum of one and one-half per centum upon the assessed value of the taxable property in the state, except in case of war, to repel an invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, as it falls due; and also for the payment and discharge of the principal of such debt or liability, within twenty years of the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the

votes cast for and against it at such election; and all moneys raised by the authority of such law, shall be applied only to the specified object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people. The legislature may, at any time after the approval of such law, by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

Section 2. The credit of the state shall not, in any manner, be given, or loaned to, or in aid of any individual association, municipality or corporation; nor shall the state directly or indirectly, become a stockholder in any association or corporation.

Section 3. No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void. *Provided*, That this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state.

This provision of the Constitution forbids positively the incurring of any indebtedness, in any manner or for any purpose, exceeding in that year the income and revenue provided for it, without the assent of two-thirds of the electors.—*Bannock County v. C. Bunting & Co. (Idaho)*, 37 Pac. 277; *County of Ada v. Bullen Bridge Co., et al. (Idaho)*, 47 Pac. 818; *Boise City v. Union Bank & Trust Co. (Idaho)*, 63 Pac. 107.

Under this section of the Constitution a city indebtedness incurred during one fiscal year cannot be paid from the income or revenue of a future fiscal year, unless a fund is especially provided for that purpose, and collected

therefor in such future year.—*Theiss et al. v. Hunter (Idaho)*, 45 Pac. 2.

The provisions of the Constitution relative to the creation of public debts are mandatory.

Boards of commissioners in creating debts, must keep within the provisions of the Constitution, and, if they fail to comply with the provisions of the Constitution, their acts are void.—*Dunbar v. Board of Commissioners of Canyon County (Idaho)*, 49 Pac. 409.

This section only applies where a debt is contracted for an extraordinary expense in excess of the revenue provided for the year.—*Ball v. Bannock County et al. (Idaho)*, 51 Pac. 454.

Section 4. No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.

ARTICLE IX.

EDUCATION AND SCHOOL LANDS.

Section.

1. Legislature to establish system of free schools.
2. Board of education.
3. Public school fund to forever remain intact.
4. Public school fund, of what consists.
5. Appropriations for religious purposes prohibited.
6. Religious doctrines prohibited in public schools.

Section.

- 7 State board of land commissioners.
8. Duty of state board and legislature respecting lands.
9. Legislature may require compulsory attendance.
10. University of Idaho regents. University lands.
11. Educational funds, how invested.

Section 1. The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.

Section 2. The general supervision of the public schools of the state shall be vested in a board of education, whose powers and duties shall be prescribed by law; the superintendent of public instruction, the secretary of state and attorney general shall constitute the board, of which the superintendent of public instruction shall be president.

Section 3. The public school fund of the state shall forever remain inviolate and intact; the interest thereon only shall be expended in the maintenance of the schools of the state, and shall be distributed among the several counties and school districts of the state in such manner as may be prescribed by law. No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. The state shall supply all losses thereof that may in any manner occur.

As Section 3, Article 9, of the state Constitution declares that the permanent school fund shall forever remain inviolate and intact, and all interest thereon shall be expended in the maintenance of the schools of the state, the

legislature is prohibited from enacting any law that would directly or indirectly divert either principal or interest to any other purpose.—State v. Fitzpatrick (Idaho), 51 Pac. 112.

Section 4. The public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation, under any law or grant of the general government, and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estate or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state; and all other grants, gifts, devises, or bequests made to the state for general educational purposes.

Section 5. Neither the legislature, nor any county, city, town, township, shool district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian, or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian or religious denomination whatsoever; nor shall an grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose.

Section 6. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shal ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts, or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article.

Section 7. The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law.

Section 8. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be, granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor: *Provided*, That no school lands shall be sold for less than (10) dollars per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other dispositions of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefits of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time, and for the sale of timber on all state lands, and for the faithful application of the proceeds thereof in acordance with the terms of

said grants: *Provided*, That not to exceed twenty-five sections of school lands shall be sold in any one year, and to be sold in subdivisions of not to exceed one hundred and sixty (160) acres to any one individual company or corporation.

Section 9. The legislature may require by law that every child of sufficient mental and physical ability shall attend the public school throughout the period between the ages of six and eighteen years, for a time equivalent to three years, unless educated by other means.

Section 10. The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments heretofore granted thereto by the Territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law. No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation.

Section 11. The permanent educational funds, other than funds arising from the disposition of university lands belonging to the state, shall be loaned on first mortgage on improved farm lands within the state, or on state or United States bonds, under such regulations as the legislature may provide: *Provided*, That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings.

ARTICLE X.

PUBLIC INSTITUTIONS.

Section.

1. State shall establish and support institutions.
2. Seat of government; location.
3. Legislature may submit question of location, when.

Section.

4. Property of territory becomes property of state.
5. State prison commissioners.
6. Directors of insane asylum.
7. Legislature may change location of institutions.

Section 1. Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, and such other institutions as the public good may require, shall be established and supported by the state in such manner as may be prescribed by law.

Section 2. The seat of government of the State of Idaho shall be located at Boise City for twenty years from the admission of the state, after which time the legislature may provide for its re-location, by submitting the question to a vote of the electors of the state at some general election.

Section 3. The legislature may submit the question of the location of the seat of government to the qualified voters of the state at

the general election, then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said legislature shall also provide that in case there shall be no choice of location at said election the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the state at the next general election.

Section 4. All property and institutions of the territory shall, upon adoption of the Constitution, become the property and institutions of the State of Idaho.

Section 5. The governor, secretary of state, and attorney general shall constitute a board, to be known as the state prison commissioners, and shall have the control, direction and management of the penitentiaries of the state. The governor shall be chairman, and the board shall appoint a warden, who may be removed at pleasure. The warden shall have the power to appoint his subordinates, subject to the approval of the said board.

Section 6. There shall be appointed by the governor three directors of the asylum for the insane, who shall be confirmed by the senate. They shall have the control, direction and management of the said asylums, under such regulations as the legislature shall provide, and hold their offices for a period of two years. The directors shall have the appointment of the medical superintendent, who shall appoint the assistants with the approval of the directors.

Section 7. The legislature for sanitary reasons may cause the removal to more suitable localities of any of the institutions mentioned in Section 1 of this article.

ARTICLE XI.

CORPORATIONS PUBLIC AND PRIVATE.

Section.

1. Certain charters and grants invalidated.
2. No charter granted by special law.
3. Legislature may alter or revoke charter.
4. Shares of stock, how voted.
5. Government of railroads; legislative control.
6. All persons have equal transportation rights.
7. Acceptance of this Constitution by corporations.
8. Eminent domain.
9. Fictitious increase of stock is void.

Section.

10. Foreign corporation must appoint agent.
11. Constructing railroad in city or town.
12. Restrictions on legislature.
13. Telegraph and telephone lines.
14. Consolidation of corporations; effect.
15. Franchises; limitation on legislature.
16. Term "corporation" construed.
17. Liability of stockholders; dues.
18. Combinations in restraint of trade prohibited.

Section 1. All existing charters or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

Section 2. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be, under the control of the state; but the legislature shall provide by general law for the organization of corporations hereafter to be created: *Provided*, That any such general law shall be subject to future repeal or alteration by the legislature.

Section 3. The legislature may provide by law for altering, revoking, or annulling any charter of incorporation existing and revocable at the time of the adoption of this Constitution, in such manner, however, that no injustice shall be done to the corporators.

Section 4. The legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock, shall equal, or to distribute, them on the same principle among as many candidates as he shall think fit, and such directors shall not be elected in any other manner.

Section 5. All railroads shall be public highways, and all railroad, transportation, and express companies shall be common carriers, and subject to legislative control, and the legislature shall have power to regulate and control by law, the rates of charges for the transportation of passengers and freight by such companies or other common carriers from one point to another in the state. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state, and to connect within or at the state line with railroads of other states and territories. Every railroad company shall have the right with its road, to intersect, connect with, or cross any other railroad, under such regulations as may be prescribed by law, and upon making due compensation.

Section 6. All individuals, associations, and corporations, similarly situated shall have equal rights to have persons or property transported on and over any railroad, transportation, or express route in this state, except that preference may be given to perishable property. No undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class, by any railroad, or transportation, or express company between persons or places within the state; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad, or transportation, or express company shall be allowed to charge, collect or receive, under penalties which the legislature shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place

or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employe thereof, shall give any preference to any individual, association, or corporation, in furnishing cars or motive power or for the transportation of money or other express matter.

Section 7. No corporation other than municipal corporations in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this Constitution in binding form.

Section 8. The right of eminent domain shall never be abridged, or so construed as to prevent the legislature from taking the property and franchise of incorporated companies, and subjecting them to public use, the same as property of individuals; and the police powers of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

Section 9. No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock, first obtaining at a meeting, held after at least thirty days' notice given in pursuance of law.

Section 10. No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served, and no company or corporation formed under the laws of any other country, state, or territory, shall have or be allowed to exercise or enjoy, within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this state.

Section 11. No street, or other railroad, shall be constructed within any city, town, or incorporated village without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street or other railroad.

Section 12. The legislature shall pass no law for the benefit of a railroad, or other corporation, or any individual or association of individuals retroactive in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past.

Section 13. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or tele-

phone within this state, and connect the same with other lines; and the legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section.

Section 14. If any railroad, telegraph, express, or other corporation, organized under any of the laws of this state shall consolidate by sale or otherwise with any railroad, telegraph, express, or other corporation organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over that part of the corporate property within the limits of the state in all matters that may arise, as if said consolidation had not taken place.

Section 15. The legislature shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise; or any of its privileges.

Section 16. The term "corporation" as used in this article, shall be held and construed to include all associations and joint stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships.

Section 17. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him.

Section 18. That no incorporated company, or any association of persons or stock company, in the State of Idaho, shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price, or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people; and that the legislature be required to pass laws for the enforcement thereof, by adequate penalties, to the extent, if necessary for that purpose, of the forfeiture of their property and franchise.

ARTICLE XII.

CORPORATIONS, MUNICIPAL.

Section.

1. Legislature to provide general laws for cities and towns.
2. County, city and town may make and enforce police laws.

Section.

3. State not to assume debts of county, etc. Exception.
4. Municipal corporation not to loan its credit.

Section 1. The legislature shall provide by general laws for the incorporation, organization and classification of the cities and towns

in proportion to the population, which laws may be altered, amended, or repealed by the general laws. Cities and towns heretofore incorporated, may become organized under such general laws, whenever a majority of electors at a general election shall so determine, under such provision therefor as may be made by the legislature.

Cited in *State v. Steunenberg* Croft, 2 Idaho 1085. (Idaho), 45 Pac. 462; *People v. Ban-*

Section 2. Any county or incorporated city or town may make and enforce, within its limits, all such local, police, sanitary, and other regulations as are not in conflict with its charter or with the general laws.

In re *Francis et al* (Idaho), 60 Pac. 561.

MUNICIPAL ORDINANCES—VALIDITY — LICENSING GAMBLING: Section 2, Article 12, Constitution, prohibits municipal ordinances in con-

flict with the general laws of the state.

The charter of Boise City and amendments thereto authorize only such ordinances as are in harmony with the general laws of the state.—In re *Ridenbaugh* (Idaho), 49 Pac. 12.

Section 3. The state shall never assume the debts of any county, town, or other municipal corporation, unless such debts shall have been created to repel invasion, suppress insurrection or defend the state in war.

Section 4. No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of any such company or association: *Provided*, That cities and towns may contract indebtedness for school, water, sanitary, and illuminating purposes: *Provided*, That any city or town contracting such indebtedness shall own its just proportion of the property thus created, and receive from any income arising therefrom, its proportion to the whole amount so invested.

ARTICLE XIII.

IMMIGRATION AND LABOR.

Section.

1. Bureau of immigration, etc.; commissioner of.
2. Eight hours a day's labor on public works.
3. Labor of convicts, where done.
4. Employment of children in mines prohibited.

Section.

5. Only citizens employed on public works.
6. Mechanics' liens.
7. Board of arbitration.
8. Duties and compensation of commissioner.

Section 1. There shall be established a bureau of immigration, labor and statistics, which shall be under the charge of a commissioner of immigration, labor and statistics, who shall be appointed by the governor, by and with the consent of the senate. The commissioner shall hold his office for two years, and until his successor shall have been appointed and qualified, unless sooner removed. The commissioner shall collect information upon the subject of labor, its relation to capital, the hours of labor and the earnings of laboring men and women, and the means of promoting their material, social,

intellectual and moral prosperity. The commissioner shall annually make a report in writing to the governor of the state of the information collected and collated by him, and containing such recommendations as he may deem calculated to promote the efficiency of the bureau.

Section 2. Not more than eight (8) hours' actual work shall constitute a lawful day's work on all state and municipal works.

Section 3. All labor of convicts confined in the state's prison shall be done within the prison grounds, except where the work is done on public works under the direct control of the state.

Section 4. The employment of children under the age of fourteen (14) years in underground mines is prohibited.

Section 5. No person, not a citizen of the United States, or who has not declared his intention to become such, shall be employed upon, or in connection with, any state or municipal works.

Section 6. The legislature shall provide by proper legislation for giving to mechanics, laborers, and material men an adequate lien on the subject matter of their labor.

Section 7. The legislature may establish boards of arbitration, whose duty it shall be to hear and determine all differences and controversies between laborers and their employers which may be submitted to them in writing by all the parties. Such boards of arbitration shall possess all the powers and authority, in respect to administering oaths, subpoenaing witnesses, and compelling their attendance, preserving order during the sittings of the board, punishing for contempt, and requiring the production of papers and writings, and all other powers and privileges, in their nature applicable, conferred by law on justices of the peace.

Section 8. The commissioner of immigration, labor and statistics shall perform such duties and receive such compensation as may be prescribed by law.

ARTICLE XIV.

MILITIA.

Section.

1. Who subject to military duty.
2. Legislature to provide for enrollment, etc.
3. Militia officers, how selected and commissioned.

Section.

4. Preservation of records, banners and relics.
5. No device or banner except flag.
6. No armed police shall be brought into state.

Section 1. All able-bodied male persons, residents of this state, between the ages of eighteen and forty-five years, shall be enrolled in the militia, and perform such military duty as may be required by law; but no person having conscientious scruples against bearing arms, shall be compelled to perform such duty in time of peace. Every person claiming such exemption from service, shall, in lieu, thereof, pay into the school fund of the county of which he may be

a resident, an equivalent in money, the amount and manner of payment to be fixed by law.

Section 2. The legislature shall provide by law for the enrollment, equipment and discipline of the militia, to conform as nearly as practicable to the regulations for the government of the armies of the United States, and pass such laws to promote volunteer organizations as may afford them effectual encouragement.

Section 3. All militia officers shall be commissioned by the governor, the manner of their selection to be provided by law, and may hold their commissions for such period of time as the legislature may provide.

Section 4. All military records, banners, and relics of the state, except when in lawful use, shall be preserved in the office of the adjutant-general as an enduring memorial of the patriotism and valor of the soldiers of Idaho; and it shall be the duty of the legislature to

Section 5. All military organizations under the laws of this state shall carry no other device, banner, or flag than that of the United States or the State of Idaho.

Section 6. No armed police force, or detective agency or armed body of men, shall ever be brought into this state for the suppression of domestic violence, except upon the application of the legislature, or the executive when the legislature cannot be convened.

ARTICLE XV.

WATER RIGHTS.

Section.

1. Use of waters a public use, when.
2. Right to collect rates is a franchise.
3. Appropriation of waters; priorities.
4. Perpetual right of agriculturist guaranteed.

Section.

5. Priorities among purchasers of use of water.
6. Legislature to provide for maximum rates.

Section 1. The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulation and control of the state in the manner prescribed by law.

All waters appropriated before or after the adoption of the Constitution, for sale, rental, or distribution, are declared to be a public use, and are exclusively dedicated to such use. Such waters being a public use, and for a public use, and being exclusively dedicated to the use of the public, such public, and the individuals composing such public, who are in a condition to use such waters, have a constitutional right to the use of such waters, under such reasonable rules and regulations, and

upon such payment, as may be prescribed, which payments and regulations must at all times be reasonable.—*Wilterding v. Green* (Idaho), 45 Pac. 134.

The sale, rental, and distributing of the water is a dedication and brings its use under the control of the state, but it in no sense destroys or abrogates the property rights of the appropriator therein.—*Wilterding v. Green* (Idaho), 45 Pac. 134.

Section 2. The right to collect rates or compensation for the use of water supplied to any county, city or town, or water district, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

Section 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district, those using the water for mining purposes, or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in Section fourteen of Article I, of this Constitution.

Section 4. Whenever any waters have been, or shall be, appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law.

Section 5. Whenever more than one person has settled upon, or improved land with the view of receiving water for agricultural purposes, under a sale, rental, or distribution thereof, as in the last preceding section of this article, provided, as among such persons priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard, both to such priority or right and the necessities of those subsequent in time of settlement or improvement, may by law prescribe.

Section 6. The legislature shall provide by law the manner in which reasonable maximum rates may be established to be charged for

the use of water sold, rented, or distributed for any useful or beneficial purpose.

Under the provisions of this section of the Constitution, the legislature is prohibited from fixing "reasonable maximum rates to be charged for water under sale or rental."

Said section commands the legisla-

ture to provide, by law, the manner in which such rates may be established, and by necessary implication prohibits the legislature from fixing such rates.--
Wilson v. Perrault (Idaho), 54 Pac. 617.

ARTICLE XVI.

LIVE STOCK.

Section.

1. Legislature to provide quarantine, etc.

Section 1. The legislature shall pass all necessary laws to provide for the protection of live stock against the introduction or spread of pleuro-pneumonia, glanders, splenetic or Texas fever, and other infectious or contagious diseases. The legislature may also establish a system of quarantine or inspection, and such other regulations as may be necessary for the protection of stock owners and most conducive to the stock interests within this state.

ARTICLE XVII.

STATE BOUNDARIES.

Section.

1. Boundaries defined. Name of state.

Section 1. The name of this state is Idaho, and its boundaries are as follows: Beginning at a point in the middle channel of the Snake river where the northern boundary of Oregon intersects the same; then follow down the channel of Snake river to a point opposite the mouth of the Kooskooskia or Clearwater river; thence due north to the forty-ninth parallel of latitude; thence east along that parallel to the thirty-ninth degree of longitude west of Washington; thence south along that degree of longitude to the crest of the Bitter Root mountains; thence southward along the crest of the Bitter Root mountains till its intersection with the Rocky mountains; thence southward along the crest of the Rocky mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west along that parallel to the eastern boundary of the State of Oregon; thence north along that boundary to the place of beginning.

Cited in State v. Mulkey (Idaho), 59 Pac. 17.

ARTICLE XVIII.

COUNTY ORGANIZATION.

Section.

1. Existing counties recognized as legal.

Section.

2. County seat. Removal of. Question submitted, how often.

Section.

3. County how divided.
4. New county, size and valuation.
5. County government; legislature to provide system.
6. County officers.
7. Salaries of county officers.
8. Compensation, how paid.

Section.

9. Neglect to pay into treasury a felony.
10. County commissioners, members and term.
11. Officers to perform duties prescribed by law.

Section 1. The several counties of the Territory of Idaho, as they now exist, are hereby recognized as legal subdivisions of this state.

This clause of the Constitution contains no limitation whatever upon the power of the legislature to change the

then existing counties. — Wright v. Kelly et al. (Idaho), 43 Pac. 565.

Section 2. No county seat shall be removed unless upon petition of a majority of the qualified electors of the county, and unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal of the county seat shall not be submitted in the same county more than once in six years, except as provided by existing laws. No person shall vote at any county seat election who has not resided in the county six months, and in the precinct ninety days.

Wilson v. Bartlett (Idaho), 62 Pac. 416.

Section 2, Article 18, was not intended to apply to the location of a

county seat, consequent upon the creation of a new county.—Doan v. Board of County Commissioners of Logan County, 2 Idaho, 781.

Section 3. No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division: *Provided*, That this section shall not apply to the creation of new counties. No person shall vote at such election who has not been ninety days a resident of the territory proposed to be annexed. When any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

FAILURE TO PROVIDE FOR ELECTION: An act to divide a county and attach the part cut off to another county without submitting the proposition to a vote of the people in the seg-

regated part, is in violation of Section 3, Article 18, of the Constitution. Sullivan, C. J., dissenting.—People v. George, 2 Idaho, 813.

Section 4. No new counties shall be established which shall reduce any county to an area of less than four hundred square miles, nor the valuation of its taxable property to less than one million dollars. Nor shall any new county be formed, which shall have an area of less than four hundred square miles, and taxable property of less than one million dollars, as shown by the last previous assessment.

Holmberg v. Jones, Auditor (Idaho), 65 Pac.

As amended at the general election held November 8th, 1898.

The original section read as follows: Section 4. No new county shall be

established which shall reduce any county to an area of less than four hundred square miles, nor shall a new county be formed containing an area of less than four hundred square miles.

Section 5. The legislature shall establish, subject to the pro-

visions of this article, a system of county governments, which shall be uniform throughout the state; and by general laws shall provide for township or precinct organizations.

Section 6. (1st amendment). The legislature by general and uniform laws shall provide for the election biennially in each of the several counties of the state, of county commissioners, a sheriff, a county treasurer who is ex-officio public administrator, a probate judge, a county superintendent of public instruction, a county assessor who is ex-officio tax collector, a coroner and a surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal monies which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, auditor and recorder, and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their offices may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners. No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected. The salary and qualifications of the county superintendent shall be fixed by law.

As amended at the general election held November 3d, 1896.

The original section read as follows:

Section 6. The legislature, by general and uniform laws, shall provide for the election biennially in each of the several counties in the state, of county commissioners, a sheriff, county treasurer, who is ex-officio public administrator; probate judge, who is ex-officio county superintendent of public instruction; county assessor, who is ex-officio tax collector; a coroner and a surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for the election of such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct, and municipal officers for all fees which may be collected by them, and for all public and municipal moneys, which may be paid to them, or officially come into their possession. The county commissioners may employ

counsel when necessary. The sheriff, auditor and recorder and clerk of the district shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their offices may require, said deputies and clerical assistance to receive such compensation as may be fixed by the county commissioners. No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected.

A constitutional amendment, separating two offices theretofore combined, which provides that "the legislature by general and uniform laws" shall provide for the "election biennially" of such officers, is not self executing, and does not go into full operation until such laws have been enacted, and a general biennial election held thereunder.—*Blake v. Board of Com'rs of Ada County (Idaho)*, 47 Pac. 734.

Section cited in *Ravenscraft et al. v. Board of Com'rs of Blaine Co. (Idaho)*, 47 Pac. 942; held self-operative in *Hillard v. Shoshone County*, 2 Idaho, 843; cited *Cunningham v. George*, 2 Idaho, 1202.

The board of county commissioners may, when the necessity exists, employ counsel, but that necessity must be apparent, and the action of the board in each case is subject to review by the courts.—*Meller v. Board* (Idaho), 35 Pac. 712.

The appointment of one to be and act as the legal adviser of the board of county commissioners for a period of two years, and a contract by the board with such appointee, defining his duties and fixing his compensation, is the creation of a county office, and is prohibited by the Constitution of this state.—*Meller v. Board* (Idaho), 35 Pac. 712.

Speaking of the authority of county commissioners to employ counsel the court, in *Hampton v. Board of Com'rs of Logan County* (Idaho), 43 Pac. 324, says: We think that before the authority given to county commissioners by Section 6, Art. 18, of the Constitution, can be exercised, the necessity which authorize it must not only be apparent, but the facts creating such necessity must be a matter of record by the board.

In the employment of counsel by county commissioners, in order to bind the county they must act as a board, and their action therein must be made a matter of record.—*Conger v. Board of Commissioners of Latah County* (Idaho), 48 Pac. 1064.

Under the provisions of the statute and of Section 6, Article 18, of the state Constitution, county commissioners are not authorized to employ coun-

sel in criminal cases.—*Conger v. Board of Commissioners of Latah County* (Idaho), 48 Pac. 1064.

The appointment of a deputy under the provisions of Section 6, Article 18, of the Constitution of Idaho is not the creation of an office.—*Dunbar v. Canyon County* (Idaho), 59 Pac. 536.

Under the provisions of this section of the Constitution, the board of county commissioners must authorize the clerk of court, ex-officio auditor and recorder to employ a deputy whenever it is shown that a necessity exists therefor; and the facts creating the necessity ought to be shown upon the record of the board.—*Woodward v. Board of Commissioners of Idaho County* (Idaho), 51 Pac. 143. Same as to sheriff in *Taylor v. Canyon County* (Idaho), 56 Pac. 168.

If the necessity for the appointment of a deputy is occasioned by the sickness or absence of the clerk on business not connected with his office, the county is not liable for the compensation of the deputy.—*Woodward v. Board of Commissioners of Idaho County* (Idaho), 51 Pac. 143.

It would appear from this provision of the Constitution that the sheriff has no power to appoint a deputy unless he is so authorized by the action of the board of county commissioners, and the said board is to authorize him so to do when the business of the office may require.—*Campbell v. Board of Commissioners of Canyon County* (Idaho), 46 Pac. 1022.

Section 7. (5th amendment). All county officers, and deputies when allowed, shall receive, as full compensation for their services, fixed annual salaries, to be paid quarterly out of the county treasury, as other expenses are paid. All actual and necessary expenses, incurred by any county officer or deputy, in the performance of his official duties, shall be a legal charge against the county, and may be retained by him out of any fees, which may come into his hands. All fees, which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into a county treasury at the end of each quarter. He shall at the end of each quarter, file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers, showing all expenses incurred and all fees received, which must be audited by the board as other accounts.

As amended at the general election held November 8th, 1898.

The original section read as follows:

Section 7. The officers provided by section six (6) of this article shall receive annually as compensation for their services as follows: Sheriff, not more than four thousand dollars and not less than one thousand dollars, to-

gether with such mileage as may be prescribed by law; clerk of the district court, who is ex-officio auditor and recorder, not more than three thousand dollars, and not less than five hundred dollars; probate judge, who is ex-officio county superintendent of public instruction, not more than two thousand dollars, and not less than five hundred

dollars; county assessor, who is ex-officio tax collector, not more than three thousand dollars and not less than five hundred dollars; county treasurer, who is ex-officio public administrator, not more than one thousand dollars, and not less than three hundred dollars; coroner, not more than five hundred dollars; county surveyor, not more than one thousand dollars; county commissioners, such per diem and mileage as may be prescribed by law; and justices of the peace and constables such fees as may be prescribed by law.

In case the fees and commissions received in any one year by the officers named in this section shall not amount to the minimum compensation herein provided, they are entitled to receive from the county a sum sufficient to make their annual compensation equal to such minimum; and it is the duty of the board of commissioners to order a warrant drawn for such amount in favor of the officers so entitled.—*Campbell v. Board of Com'rs of Logan County (Idaho)*, 37 Pac. 329.

The probate judge is made ex-officio superintendent of public instruction, and the statute provides that he may act as the clerk of his own court. He is still one person although performing the duties of all three of these positions; and the Constitution limits the fees and commissions he may retain for performing such duties to the sum of \$2,000 per annum.

It is the opinion of the court that it was the intention of the framers of the Constitution to limit the compensation that may be received and retained for the performance of all the duties of the probate judge, superintendent of public instruction, and the clerk of the probate court, to the sum of \$2,000 per

annum; and therefore the probate judge may unite all these offices or functions in himself, and receive all the fees to the limit named, or he may appoint another person clerk, and permit him to receive such fees. But the fees and commissions received by such judge and such clerk in excess of \$2,000 must be paid to the county treasurer. Any other construction would defeat the plain intent of the Constitution.—*Ada County v. Ryals (Idaho)*, 39 Pac. 556; same construction as to Clerk of District Court, *Woodward v. Board of Commissioners of Idaho Co. (Idaho)*, 51 Pac. 143.

The minimum and maximum annual compensation of assessor and tax collector is fixed by this section of the Constitution, and he can in no event receive a larger sum than herein provided.—*Guheen, Assessor and Tax Collector, v. Curtis, County Treasurer*, 2 Idaho, 1151; *Ada County v. Gess (Idaho)*, 43 Pac. 71.

(Note: All the foregoing decisions were rendered before the section was amended. Since amendment is the following decision:)

The legislature have authority to provide by statute the maximum and minimum salary of county officers, and may vest in the boards of county commissioners the discretionary authority of determining the amount of salary of county officers within the limit of such maximum and minimum salary, except the salary of such county commissioners.—*Stookey v. Board of County Commissioners of Nez Perce County (Idaho)*, 57 Pac. 312; section cited in *Hillard v. Shoshone County*, 2 Idaho, 843; *Cunningham v. Moody*, 2 Idaho, 863.

Section 8. The compensation provided in section seven (7) for the officers therein mentioned shall be paid by fees or commissions, or both, as prescribed by law. All fees and commissions received by such officers in excess of the maximum compensation per annum provided for each in section seven (7) of this article shall be paid to the county treasurer for the use and benefit of the county. In case the fees received in any one year by any one such officers shall not amount to the minimum compensation per annum therein provided, he shall be paid by the county a sum sufficient to make his aggregate annual compensation equal to such minimum compensation.

Cited in *Naylor v. Vermont Loan & Trust Co. (Idaho)*, 55 Pac. 297; *Hillard v. Shoshone County*, 2 Idaho, 847.

Section 9. (6th amendment). The neglect or refusal, of any county officer or deputy to account for and pay into the county treasury, any money received, as fees or compensation, in excess of his actual and necessary expenses, incurred in the performance of his official duties, within ten days after his quarterly settlement with the

county, shall be a felony, and the grade of the crime shall be embezzlement of public funds, and be punishable as provided for such offenses.

As amended at the general election held November 8th, 1898.

The original section read as follows:

Section 9. The neglect or refusal of any officer named in this article to account for and pay into the county treasury any money received as fees or compensation in excess of the maxi-

mum amount allowed to such officer by the provisions of this article within forty days after the receipt of the same, shall be a felony, and the grade of the crime shall be the embezzlement of public moneys, and be punishable as provided for such offense.

Section 10. The board of county commissioners shall consist of three members, whose terms of office shall be two years.

Section 11. County, township and precinct officers shall perform such duties as shall be prescribed by law.

ARTICLE XIX

APPORTIONMENT.

Section.

1. Apportionment of the senate.

Section.

2. Apportionment of the house.

Section 1. Until otherwise provided by law the apportionment of the two houses of the legislature shall be as follows:

The first senatorial district shall consist of the county of Shoshone, and shall elect two senators.

The second shall consist of the counties of Kootenai and Latah, and shall elect one senator.

The third shall consist of the counties of Nez Perce and Idaho, and shall elect one senator.

The fourth shall consist of the counties of Nez Perce and Latah, and shall elect one senator.

The fifth shall consist of the county of Latah, and shall elect one senator.

The sixth shall consist of the county of Boise, and shall elect one senator.

The seventh shall consist of the county of Custer, and shall elect one senator.

The eighth shall consist of the county of Lemhi, and shall elect one senator.

The ninth shall consist of the county of Logan, and shall elect one senator.

The tenth shall consist of the county of Bingham, and shall elect one senator.

The eleventh shall consist of the counties of Bear Lake, Oneida and Bingham, and shall elect one senator.

The twelfth shall consist of the counties of Owyhee and Cassia, and shall elect one senator.

The thirteenth shall consist of the county of Elmore, and shall elect one senator.

The fourteenth shall consist of the county of Alturas, and shall elect one senator.

The fifteenth shall consist of the county of Ada, and shall elect two senators.

The sixteenth shall consist of the county of Washington, and shall elect one senator.

Section 2. The several counties shall elect the following members of the house of representatives.

The county of Ada, three members.

The counties of Ada and Elmore, one member.

The county of Alturas, two members.

The county of Boise, two members.

The county of Bear Lake, one member.

The county of Bingham, three members.

The county of Cassia, one member.

The county of Custer, two members.

The county of Elmore, one member.

The county of Idaho, one member.

The counties of Idaho and Nez Perce, one member.

The county of Kootenai, one member.

The county of Latah, two members.

The counties of Kootenai and Latah, one member.

The county of Logan, two members.

The county of Lemhi, two members.

The county of Nez Perce, one member.

The county of Oneida, one member.

The county of Owyhee, one member.

The county of Shoshone, four members.

The county of Washington, two members.

The counties of Bingham, Logan and Alturas, one member.

ARTICLE XX.

AMENDMENTS.

Section.

1. Proposing amendments; legislative action.
2. Two or more amendments, how submitted.

Section.

3. Calling a constitutional convention.
4. Constitution must be adopted by the people.

Section 1. Any amendment or amendments to this Constitution may be proposed in either branch of the legislature, and if the same shall be agreed by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the state at the next general election, and cause the same to be published without delay for at least six consecutive weeks, prior to said election, in not less than one newspaper of general circulation published in each county; and if

a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

Under the provisions of this section of the Constitution, where a majority of the electors voting upon that question vote in favor of the amendment the same is ratified, although the votes thus cast are not a majority of the votes cast at the general election for state officers.—*Green v. State Board of Canvassers (Idaho)*, 47 Pac. 259.

A substantial compliance with the provisions of Sections 1 and 2 of this article in the matter of proposing amendments to the Constitution, and submitting them to the people for ratification, is sufficient.—*Hays v. Hays (Idaho)*, 47 Pac. 732.

Under the provisions of this section amendments may be proposed by the legislature by joint resolution.—*Hays v. Hays (Idaho)*, 47 Pac. 732.

In determining the time at which a Constitutional amendment becomes fully operative, the intention of the people adopting it should be ascertained. This should be done from the context of the amendment, and, in case of doubt, the court should also consider the existing conditions, and the results which would follow if the amendment was held to have become immediately operative.—*Hays v. Hays (Idaho)*, 47 Pac. 732.

Section 2. If two or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.

Section 3. Whenever two-thirds of the members elected to each branch of the legislature shall deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote at the next general election for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members not less than double the number of the most numerous branch of the legislature.

Section 4. Any Constitution adopted by such convention, shall have no validity until it has been submitted to, and adopted by, the people.

ARTICLE XXI

SCHEDULE AND ORDINANCE.

Section.

1. Writs, etc., issued in name of territory to continue.
2. Territorial laws to remain in force until repealed.
3. Fines, etc., accruing to territory shall accrue to state.
4. Bonds to continue in force. Criminal prosecutions.
5. Territorial officers to continue until suspended.
6. Submission of this Constitution to the electors.
7. When this Constitution takes effect.
8. Calling first election under Constitution.
9. First election; how conducted. Qualified electors.

Section.

10. Canvassing vote of first election.
11. County canvassing boards to issue certificates.
12. First officers; when they enter into office.
13. Term of office of first officers.
14. First legislature; election of U. S. senators.
15. Legislature to pass laws carrying Constitution into effect.
16. Transfer of territorial cases to state courts.
17. Court seals retained.
18. Probate courts; transition.
19. Religious toleration. Public lands.
20. Constitution of United States adopted.

Section 1. That no inconvenience may arise from a change of the territorial government to a permanent state government, it is de-

clared that all writs, actions, prosecutions, claims, liabilities, and obligations against the Territory of Idaho, of whatsoever nature, and rights of individuals, and of bodies corporate, shall continue as if no change had taken place in this government; and all process which may before the organization of the judicial department under this constitution, be issued under the authority of the Territory of Idaho, shall be as valid as if issued in the name of the state.

Section 2. All laws now in force in the Territory of Idaho which are not repugnant to this Constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

Cited in *Gilbert v. Moody*, 2 Idaho, 2 Idaho, 787.
750; *Doan v. Board of Commissioners*,

Section 3. All fines, penalties, forfeitures, and escheats accruing to the Territory of Idaho shall accrue to the use of the state.

Section 4. All recognizances, bonds, obligations, or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this Constitution, shall remain valid, and shall pass over to and may be prosecuted in the name of the state; and all bonds, obligations, or other undertaking executed by this territory, or to any other officer in his official capacity, shall pass over to the proper state authority, and to their successors in office, for the use therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which have arisen, or which may arise before the organization of the judicial department under this Constitution, and which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

Section 5. All officers, civil and military, now holding their offices and appointments in this territory under the authority of the United States, or under the authority of this territory, shall continue to hold and exercise their respective offices and appointments until suspended under this Constitution.

Section 6. This Constitution shall be submitted for adoption or rejection, to a vote of the electors qualified by the laws of this territory to vote at all elections at an election to be held on the Tuesday next after the first Monday in November, A. D. 1889. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general election, and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general elections, and abstracts of such returns duly certified shall be transmitted to the board of canvassers now provided by law for canvassing the returns of votes for delegate in congress. The said canvassing board shall canvass the votes so returned and certify and declare the result of said election in the same manner, as is required by law for the election of said delegate.

At the said election the ballots shall be in the following form:
For the Constitution—yes; no.

And as a heading to each of said ballots shall be printed on each ballot, the following instructions to voters:

All persons who desire to vote for the Constitution, or any of the articles submitted to a separate vote, may erase the word "no."

All persons who desire to vote against the Constitution, or against any article submitted separately, may erase the word "yes."

Any person may have printed or written on his ballot only the words, "For the Constitution" or "Against the Constitution," and such ballots shall be counted for or against the Constitution accordingly.

Section 7. This Constitution shall take effect and be in full force immediately upon the admission of the territory as a state.

Section 8. Immediately upon the admission of the territory as a state, the governor of the territory, or in case of his absence or failure to act, the secretary of the territory, or in case of his absence or failure to act, the president of this convention, shall issue a proclamation, which shall be published, and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people of all state, district, county, township, and other officers, created and made elective by this constitution, and fixing a day for such election, which shall not be less than forty days after the date of such proclamation, nor more than ninety days after the admission of the territory as a state.

Cited in *Doan v. Board of Commissioners*, 2 Idaho, 783.

Section 9. The board of commissioners of the several counties shall thereupon order an election for said day, and shall cause notice thereof to be given, in the manner and for the length of time provided by the laws of the territory in cases of general elections for delegate to congress and county and other officers. Every qualified elector of the territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general election, but returns for all state and district officers and members of the legislature, shall be made to the canvassing board hereinafter provided for.

Section 10. The governor, secretary, controller, and attorney general of the territory, and the president of this convention, or a majority of them, shall constitute a board of canvassers to canvass the vote at such elections for all state and district officers and members of the legislature. The said board shall assemble at the seat of government of the territory, on the thirtieth day after the date of such election (or on the following day if such day fall on Sunday), and proceed to canvass the votes for all state and district officers and members of the legislature, in the manner provided by the laws of

the territory for canvassing the vote for delegate to congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the secretary of the territory an abstract certified by them of the number of votes cast for each person for each of said offices and of the total number of votes cast in each county.

Section 11. The canvassing boards of the several counties shall issue certificates of election to the several persons found by them to have been elected to the several county and precinct offices.

Section 12. All officers elected at such election shall, within thirty days after they have been declared elected, take the oath required by this Constitution, and give the same bond required by the law of the territory to be given in case of like officers of the territory, district or county, and shall thereupon enter upon the duties of their respective offices, but the legislature may require by law all such officers to give other or further bonds as a condition of their continuance in office.

Section 13. All officers elected at said election shall hold their offices until the legislature shall provide by law, in accordance with this Constitution, for the election of their successors, and until such successors shall be elected and qualified.

Section 14. The governor-elect of the state, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the legislature of the state at the seat of government on a day to be named in said proclamation and which shall not be less than thirty nor more than sixty days after the date of such proclamation. Within ten days after the organization of the legislature both houses of the legislature shall then and there proceed to elect, as provided by law, two senators of the United States for the State of Idaho. At said election the two persons who shall receive the majority of all the votes cast by said senators and representatives, shall be elected as such United States senators, and shall be so declared by the presiding officers of said joint session. The presiding officers of the senate and house, shall issue a certificate to each of said senators, certifying his election, which certificates shall also be signed by the governor and attested by the secretary of state.

Cited in *Goodnight v. Moody*, 2 Idaho, 755.

Section 15. The legislature shall pass all necessary laws to carry into effect the provisions of this Constitution.

Section 16. Whenever any two of the judges of the supreme court of the state, elected under the provisions of this Constitution, shall have qualified in their offices, the causes then pending in the supreme court of the territory, and the papers, records, and proceedings of said court, and the seal and other property pertaining thereto shall pass into the jurisdiction and possession of the supreme court of the state; and until so superceded the supreme court of the territory and the judges thereof shall continue, with like powers and

jurisdiction as if this Constitution had not been adopted. Whenever the judge of the district court of any district, elected under the provisions of this Constitution, shall have qualified in office, the several causes then pending in the district court of the territory, within any county in such district, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the state for such county; and until the district courts of this territory shall be superceded in the manner aforesaid the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively, as heretofore constituted under the laws of the territory.

Section 17. Until otherwise provided by law, the seals now in use in the supreme and district courts of this territory are hereby declared to be the seals of the supreme and district courts, respectively, of the state.

Section 18. Whenever this Constitution shall go into effect, the books, records and papers and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the probate court of the same county of the state, and the said probate court shall proceed to final decree or judgment, order, or other determination in the said several matters and causes as the said probate court might have done as if this Constitution had not been adopted.

Section 19. It is ordained by the State of Idaho that perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship. And the people of the State of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits, owned or held by any Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States, residing without the said State of Idaho, shall never be taxed at a higher rate than the lands belonging to the residents thereof. That no taxes shall be imposed by the state on the lands or property therein belonging to, or which may hereafter be purchased by, the United States, or reserved for its use. And the debts and liabilities of this territory shall be assumed and paid by the State of Idaho. That this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Idaho.

Section 20. That on behalf of the people of Idaho, we, in convention assembled, do adopt the Constitution of the United States.

Done in open convention at Boise City, in the Territory of Idaho, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-nine.

WM. H. CLAGGETT, *Prest.*

GEO. AINSLIE.

W. C. B. ALLEN.

ROB'T. ANDERSON.

H. ARMSTRONG.

ORLANDO B. BATTEN.

FRANK W. BEANE.

JAS. H. BEATTY.

J. W. BALLENTINE.

A. D. BEVAN.

HENRY D. BLAKE.

FREDERICK CAMPBELL.

FRANK P. CAVANAH.

A. S. CHANEY.

CHAS. A. CLARK.

I. N. COSTON.

JAS. I. CRUTCHER.

STEPHEN S. GLIDDEN.

JOHN S. GRAY.

WM. W. HAMMEL.

AARON F. PARKER.

A. J. PIERCE.

A. J. PINKHAM.

J. W. POE.

THOS. PYEATT.

JAS. W. REID.

W. D. ROBBINS.

WM. H. SAVIDGE.

AUG. M. SINNOTT.

JAMES M. SHOUP.

DREN W. STANDROD.

FRANK STUNENBERG.

HOMER STULL.

H. S. HAMPTON.

H. O. HARKNESS.

FRANK HARRIS.

SOL. HASBROUCK.

C. M. HAYS.

W. B. HEYBURN.

JOHN HOGAN.

J. M. HOWE.

E. S. JEWELL.

G. W. KING.

H. B. KINPORT.

JAS. W. LAMOREAUX.

JOHN LEWIS.

WM. C. MAXEY.

A. E. MAYHEW.

W. J. McCONNELL.

HENRY MELDER.

JOHN H. MYER.

JOHN T. MORGAN.

A. B. MOSS.

WILLIS SWEET.

SAM. F. TAYLOR.

J. L. UNDERWOOD.

LYCURGUS VINEYARD.

J. S. WHITTON.

EDGAR WILSON.

W. W. WOODS.

JOHN LEMP.

N. I. ANDREWS.

P. MC MAHON.

SAMUEL J. PRITCHARD.

J. W. BRIGHAM.

P. J. PEFFLEY.

NATURALIZATION.

Section.

- 2165. Aliens, how naturalized.
- 2166. Aliens honorably discharged from military service.
- 2167. Minor residents.
- 2168. Widow and children of declarants.
- 2169. Aliens of African nativity and descent.
- 2170. Residence of five years in United States.

Section.

- 2171. Alien enemies not admitted.
- 2172. Children of persons naturalized under certain laws to be citizens.
- 2173. Police court of District of Columbia has no power to naturalize foreigners.
- 2174. Naturalization of seamen.

Section 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be ad--

mitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings, required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the name shall not entitle him to be considered and deemed a citizen of the United States. [Be it enacted by the senate and the house of representatives of the United States of America in congress assembled, That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the revised statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk are hereby declared

as legal and valid as if made before one of the courts named in said section].

Section 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

Section 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court that, for two years next preceding, it has been his bona fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Section 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths proscribed (*) by law.

Section 2169. The provisions of this title shall apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent.

Section 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Section 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth

(*) Error in the roll; should be *prescribed*.

day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Section 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof and the children of persons who are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

Section 2173. The police court of the District of Columbia shall have no power to naturalize foreigners.

Section 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant-vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

UNITED STATES STATUTES RELATIVE TO AUTHENTICATION OF RECORDS.

Section 905. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory, or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from which they are taken.

Section 906. All records and exemplifications of books, which may be kept in any public office of any state or territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other state or territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor or secretary of state, the chancellor or keeper of the great seal, of the state, or territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commisisoned and qualified; or, if given by such governor, secretary, chancellor or keeper of the great seal, it shall be under the great seal of the state, territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the state, territory, or country, as aforesaid, from which they are taken.

Section 907. It shal be lawful for any keper or person having the custody of laws, judgments, orders, decrees, journals, correspondence, or other public documents of any foreign government or its agents, relating to the title to lands claimed by or under the United States on the application of the head of one of the departments, the solicitor of the treasury, or the commissioner of the general land office, to authenticate copies thereof under his hand and seal, and to

certify them to be correct and true copies of such laws, judgments, orders, decrees, journals, correspondence, or other public documents, respectively, and when such copies are certified by an American minister or consul, under his hand and seal of office, to be true copies of the originals, they shall be sealed up by him and returned to the solicitor of the treasury, who shall file them in his office, and cause them to be recorded in a book to be kept for that purpose. A copy of any such law, judgment, order, decree, journal, correspondence, or other public document, so filed, or of the same so recorded in said book, may be read in evidence in any court, where the title to land claimed by or under the United States may come into question, equally with the originals.

ACT CREATING CODE COMMISSION.

Section 1. The governor of the State of Idaho is hereby authorized and empowered to present to the state senate, now in session, for its approval, the names of five persons, learned in the law and members of the bar of the supreme court of this state, one of whom to be designated by the governor, shall be chairman; such persons, upon being approved by said senate, shall be known as the Code Commission, and they shall be authorized to codify the laws, civil and criminal, and the law of civil procedure and to revise, simplify, arrange, and consolidate the statutes of the State of Idaho, which shall be in force at the time such commission shall make its final report.

Section 2. It shall be the duty of the commission to prepare the following Codes, the Political Code, the Civil Code, the Code of Civil Procedure and the Penal Code.

The Political Code shall treat of the sovereignty of the people of the state, of the political rights and duties, of the political divisions of the state, of the government of the counties, cities and towns and of such other general laws as shall seem proper to the commission.

The Civil Code shall consist of the body of the common law, with such statutory changes therein as have been enacted by the legislature of the territory, and of the State of Idaho, with such changes and amendments as it shall seem to the commission advisable.

The Code of Civil Procedure shall treat of the procedure and practice in civil actions and proceedings in all the courts of the state, or any subdivision thereof.

The Penal Code shall treat of crimes and misdemeanors and the punishment thereof, of criminal procedure and penitentiaries, prisons and jails.

The commission shall also make and prepare a report designating what statutes or parts of statutes are repealed by the provisions of any other act reported by them, and what, if any, laws of a general nature ought to be enacted in addition to the Codes reported.

Section 3. The Political Code must contain in addition to other matters required, the Magna Charta, the Declaration of Independence, the Constitution of the United States, with the amendments, the Organic Act of the Territory of Idaho, the act of congress admitting Idaho as a state, the Constitution of the State of Idaho, the laws of the United States providing for the naturalization of citizens, being sections 2165 to 2174, inclusive, of the revised statutes of the United States, the statutes of the United States relative to the authentication of records, being sections 905, 906 and 907 of the revised statutes of the United States and a copy of this act.

Section 4. After each section or subdivision of the matter to be comprised in the several volumes, there shall be as complete a reference to all decisions, interpreting, construing, or applying the law as may be, whether of the courts of Idaho, or of the courts whereby similar laws have been interpreted.

Section 5. The Code Commissioners must make for each of the four Codes a complete working index of the contents thereof, alphabetically arranged, and of sufficient particularity to refer to each section contained in said volume and to the subject thereof, which index must be printed and bound in each appropriate volume, and must make a general index of like particularity which must be printed and bound in each volume, as the same shall be finally published.

Section 6. Said commission shall receive a compensation for their services as follows: The chairman of said commission, the sum of three thousand five hundred (\$3500.00) dollars, and the other commissioners the sum of two thousand (\$2000.00) dollars each. The chairman of said commission shall have his office at Boise City, and shall devote his entire time to the work of said commission, and shall supervise and direct the same, and shall have power to require the attendance of at least one or more of said commissioners at his office in Boise City at any or all times when he shall deem such attendance necessary, and may call a meeting of said commission at any time when he may deem the same necessary. The said commissioners are empowered and authorized to employ such assistance as may be necessary, at an expense of not to exceed one thousand eight hundred (\$1800.00) dollars. It is hereby made the duty of the secretary of state to furnish said commission a suitable office and to furnish the same and supply such commissioners with all books, stationery, postage, and other articles which may, by said commissioners, be required in the performance of their official duties.

Section 7. It shall be the duty of said commission on the first Monday of each quarter, commencing on the first Monday of July, 1899, to file with the secretary of state a report showing, with as much detail as practicable, the progress being made with the work before them, and it shall be the duty of the governor, attorney general and secretary of state, as soon after said quarterly report has been filed as they can conveniently do so, to examine said report for the purpose of determining whether or not satisfactory progress has been made by said commission. If they shall finally decide that satisfactory progress has been made for the past quarter, they shall certify said finding to the state auditor, whereupon said auditor shall be authorized, and it shall be lawful for him to draw his warrant on the general fund of the state, in favor of each of the commissioners for one-sixth (1-6) of the salary herein provided for. And also to draw his warrant for the amount due the clerk of said board, and for other expenses as herein provided, but in no event shall any of said commissioners be allowed to receive to exceed two-thirds (2-3) of the salary

herein provided for, until said work shall have been completed and the final report made thereon and approved.

Section 8. The labors of the commission shall be concluded on or before the first day of October, 1900, and at said time it shall be the duty of the commission to file with the secretary of state three copies of each of said Codes, with the indices and references herein provided for, and the same shall be submitted for action to the legislature of the State of Idaho at its next general or special session.

Section 9. On or before the first day of October, 1900, the commission shall file five copies of their final report with the secretary of state, which said report shall contain at length all amendments that in their opinion may be necessary to harmonize and complete the Codes as printed, and which amendments so suggested must refer specifically to the section, chapter or article of the printed Code shown thereby, and the secretary of state must cause such final report to be printed for the use of the members of the legislative assembly.

Section 10. Each of the Codes and indices must be so far completed as to be in a condition to print by the first day of October, 1900, and as soon thereafter as possible, the state auditor must have five hundred (500) copies of each of said Codes printed in the same type, and body type, as is used in the printing of the revised statutes of Idaho, and bound with paper covers, the Code commissioners being required to read and correct the proof sheets of said volume or volumes to be delivered to the state auditor corrected, printed and bound, on or before the first day of December, 1900.

Section 11. Upon the receipt of the printed Codes, the auditor must deliver one printed copy of each volume of said Codes to each member of the legislative assembly, which printed volume, when so delivered must have the effect of bills printed for the use of the members of the legislative assembly, and shall also deliver, by mail or express, one copy of each volume to each judge of any court of record in the State of Idaho, one copy of each volume to each state officer, county attorney, members of the board of county commissioners, and seven copies of each volume to the clerks of the district courts of Idaho, for distribution to, and examination by, the members of the bar of such courts, and to each member of the Code commission, five copies of each volume.

Section 12. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of thirteen thousand five hundred (\$13,500) dollars, or so much thereof as may be necessary for carrying out the provisions of this act.

Approved, March 2, 1899.

ACT CREATING NEW CODE COMMISSION

APPROVED MARCH 14, 1901.

Section 1. Creation of Commission, Compensation:

The governor of the State of Idaho is hereby authorized and empowered to appoint two code commissioners, who, with the Attorney General as ex-officio member and chairman thereof, shall constitute the code commission for the State of Idaho. Said persons so appointed shall be learned in the law and shall be members of the bar of the supreme court of this State, and shall each receive as their full compensation for all services to be performed, the sum of twelve hundred fifty dollars (\$1250.00), which shall include clerk hire, stationery and office expenses. The Attorney General shall serve without pay.

Section 2. Duties of Commission: It shall be the duty of said code commission to revise, continue and complete the work of the code commission of the State of Idaho, created under and by virtue of an act of the legislature entitled, "An act to provide for the codification of the laws of the State of Idaho," approved March 2nd, 1899; and said code commission is hereby instructed to strike out and eliminate from the codes prepared by the code commission of 1899, the new sections or additions to the statutes of said State printed in any of said codes, and to include therein only the present existing laws of the State of Idaho together with the annotations thereon and the political code shall, in addition thereto, contain those matters named in Section 3 of said act, creating the code commission of 1899, and also the act of the legislature of the State of Idaho creating this commission.

Section 3. Same: Said code commission shall also codify and insert in their proper places in said codes all laws passed at the present or sixth session of the legislature of the State of Idaho except special and local laws, and annotate said laws by reference to the decisions of the supreme court of this state and the federal courts.

Section 4. Same: Said code commission shall supervise the printing of said laws in an edition of four volumes to be known as the political code, the civil code, the code of civil procedure and the penal code; and it shall be its duty to prepare and complete such codes so that one of the said codes shall be in the possession of the printer on or before the first day of June, 1901, and that all said codes shall be completed and ready for printing on or before the first day of August, 1901; and said code commission shall read the proof of said codes and compare the same with the existing laws of Idaho, and shall certify to the correctness of the same in each code.

Section 5. Appropriation for Commission: There is hereby appropriated the sum of twenty-five hundred (\$2500.00) dol-

lars in full payment of the services of said code commission including clerk hire, stationery and office expenses.

Section 6. Appropriation for Printing; Distribution of Codes: There is hereby appropriated the sum of nine thousand five hundred dollars, or so much thereof as may be necessary, to pay for the printing and publication of five hundred sets of said codes to be delivered to the Secretary of State of the State of Idaho, to be by him distributed as follows:

To each board of county commissioners, one set; to the auditor and recorder of each county, one set; to the clerk of the district court of each county, one set; to the probate judge of each county, one set; to the county attorney of each county, one set; to the sheriff of each county, one set; to the judge of the district court of each judicial district of the State of Idaho, one set; to each judge of the supreme court, one set; to the clerk of the supreme court, two sets; to each State officer one set, and to the head of each department of the State government, one set; to each State or public library with which exchanges are made, one set.

That said codes and statutes so distributed as aforesaid shall be marked, "Property of the State of Idaho," and shall be turned over to the successors in office of the different county officials to which they are distributed, and any county officer or other person to whom said statutes are distributed shall be guilty of a misdemeanor if they fail to deliver the same to their successors in office.

Section 7. Contract for Printing, by Whom Awarded: That the contract for printing said codes shall be awarded by the Governor, the Attorney General and the Secretary of State.

Section 8. Codes Prima Facie Evidence of the Law: That said codes, when so printed and published shall be received in all the courts of this State, as prima facie evidence of all the general laws of the State of Idaho existing and in operation at the date of their publication; and in pleading, any of the statutes of this State in any court, the same may be referred to, by naming the number of the section of the proper code as the same are published in this codification.

Section 9. Publisher of the Codes may Print Additional Copies—Price of: That the publisher or person publishing this edition of the codes of the State of Idaho shall be permitted to print and publish and by them sold any additional number of sets as they may desire and to furnish the same to members of the bar and others who desire to purchase the same at a price not to exceed fifteen (\$15.00) dollars per set.

COMMISSIONERS' CERTIFICATE.

UNITED STATES OF AMERICA,
STATE OF IDAHO.

We, the undersigned, constituting the Code Commission for the State of Idaho, do hereby certify that the laws contained in these volumes, known, respectively, as The Political Code, The Civil Code, The Code of Civil Procedure and The Penal Code of the State of Idaho, have been by us compared with and the same do constitute and include the present existing laws of the State of Idaho, except special and local laws.

Frank Martin.

*Attorney General,
Ex-Officio Member and Chairman.*

H. M. Ruess

Alfred A. Fraser

Members Code Commission for the State of Idaho.

Dated Boise, Idaho, this first day of November, 1901.

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DEFINING CERTAIN GENERAL PROVISIONS APPLICABLE TO ALL THE CODES OF THE STATE OF IDAHO.

Section 1. Application of Provisions: These general provisions shall be applicable alike to the Political Code, the Civil Code, the Code of Civil Procedure and the Penal Code of the State of Idaho.

New Sec. by Commission.

Section 2. Of what Statutes Consist: The general Statutes of the State of Idaho shall consist of the following:

Political Code.

Civil Code.

Code of Civil Procedure.

Penal Code.

1887 R. S. Sec. 1, rewritten by Commission.

Section 3. When Codes take Effect: These Codes take effect upon their publication, duly certified by the commission.

1901, act creating new Code Commission, Secs. 3 and 8.

Section 4. Codes not Retroactive: No part of these Codes is retroactive, unless expressly so declared.

1887 R. S. Sec. 3; Laws 1881, p. 1, Sec. 2.

See Const. Art. 1, Sec. 16.

RETROSPECTIVE LAWS: Acts of the legislature are not to be construed retrospectively, so as to take away vested rights, although they may alter or modify the remedy, nor can a healing act effect existing judgments.—*People v. Moore*, 1 Idaho, 662.

The act of March 5, 1895 (Third Session, p. 34), amending Revised Statutes Section 4492 extending the time of redemption for mortgage foreclosure sales does not affect sales under foreclosure of mortgages recorded prior to

the passage of the act.—*Wilder v. Campbell* (Idaho), 43 Pac. 677.

Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past must be deemed retrospective.—*Burill's Law Dictionary*.

A retrospective statute affecting and changing vested rights is very generally considered, in this country, as founded on unconstitutional principles, and consequently inoperative and void. But this doctrine is not understood to

apply to remedial statutes which may be of a retrospective nature, provided they do not impair contracts or disturb absolute vested rights and go only to confirm rights already existing and in furtherance of the remedy by curing defects and adding to the means of enforcing existing obligations.—1 Kent's Comm. 455.

The remedy subsisting in a state when and where a contract is made and is to be performed is a part of its obligation, and any subsequent law of the state which so affects that remedy as substantially to impair and lessen the value of the contract is forbidden by the constitution, and is, therefore, void.—*Edwards v. Kearzey*, 96 U. S. 595.

Section 5. Codes to be Liberally Construed: The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to these Codes. The Codes establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed, with a view to effect their objects and to promote justice.

1887 R. S. Sec. 4; Laws 1881, p. 1, Sec. 3.

Salisbury v. Lane (Idaho), 63 Pac. 383.

CONSTRUCTION, DUTY OF COURTS: It is the duty of the courts so to construe statutes as to make them effect their evident purpose and harmonize their various provisions with one another, and when the application of these rules still leaves a question of doubt, the principles of justice and reason must determine the doubt.—*Lamkin v. Sterling*, 1 Idaho, 92.

STATUTES IN DEROGATION OF COMMON LAW, CONSTRUCTION: Idaho reverses the rule of the common law that the statute in derogation of the common law must be strictly construed. Under our Code, such statutes are to be liberally construed with a view to promote justice.—*Darby v. Heagerty*, 2 Idaho, 260, 13 Pac. 85.

Statutes are prospective in operation only, unless a contrary intention is clearly expressed in them or is necessarily to be inferred from them.—*Gillotel vs. Mayor of the City of New York*, 87 N. Y. 441; *Murray v. Gibson*, 15 How. (U. S.), 421.

This rule applies equally, whether the new statute is enacted independently or as an amendment to an existing statute.—*Benton v. Wickwise*, 54 N. Y. 226; *In the Matter of Pengent*, 67 N. Y. 444.

Retrospective laws are not per se invalid in the absence of constitutional provisions to the contrary.—*State v. Whittlesey*, 17 Wash. 447, 50 Pac. 119.

In adopting this section from California, Idaho did not adopt the interpretation of the courts of California, as is the usual rule, because the rule in Idaho at the time this section was adopted, was that all statutes, whether in derogation of the common law or not, must be liberally construed.—*Flood v. McClure* (Idaho), 32 Pac. 255.

This section has been cited in the following cases: *State v. Inhabitants of the Town of Pocatello*, 2 Idaho, 914, 28 Pac. 411; *Wright v. Westheimer*, 2 Idaho, 969, 28 Pac. 430; *McDonald v. Burke*, 2 Idaho, 997, 28 Pac. 440; *Blackfoot Stock Co. v. Delaume*, 2 Idaho, 1019, 29 Pac. 97; *In re Dowling* (Idaho), 43 Pac. 871; *Gwinn v. McDaniel* (Idaho), 43 Pac. 74; *Wheeler v. Commercial Bank of Moscow* (Idaho), 46 Pac. 830; *Barnes v. Buffalo Pitts Co.* (Idaho), 57 Pac. 267.

Section 6. Construction of Provisions Similar to Existing Statutes: The provisions of these Codes, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

1887 R. S. Sec. 5; Laws 1881 p. 1, Sec. 4.

WHEN PORTIONS OF AMENDED ACTS TAKE EFFECT: Where an act is amended the sections of the amended act, which are copied verbatim from the original act take effect from the date of the original act.—*People v. State Board*

of Equalization, 20 Colo. 220, 37 Pac. 964.

The portions of an amended section which are merely copied without change are not to be considered as repealed and re-enacted, but to have been the law all along, and the new parts, or the changed portions are not to be

taken to have been the law at any time prior to the passage of the amended act.—*Ely v. Holton*, 15 N. Y. 598; *C. P.*

R. R. Co. v. Shackelford, 63 Cal. 261-265; *Swamp Land Dist. No. 307 v. Glide*, 112 Cal. 85, 44 Pac. 451.

Section 7. Tenure of Office Preserved: All persons who at the time these Codes take effect hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by these Codes.

1887 R. S. Sec. 6.

EFFECT ON APPOINTIVE OFFICERS: If an office filled by appointment of the governor requires the confirmation of the senate, such a vacancy therein as will authorize the governor to fill the same, without the consent of the senate can be caused only by the death or resignation of the incumbent, or by the happening of some other event, by reason of which the duties of the office are no longer discharged.—*People v. Bissell*, 49 Cal. 407.

In the same case the court held that a person who held an office in the state by appointment of the governor before the Codes took effect which office was continued by the Political Code, is entitled, even if the term of office has expired, to continue to discharge its duties until his successor has qualified. And see *People v. Edwards*, 93 Cal. 153, 28 Pac. 831.

Section 8. Effect of Repeal of Act Creating an Office: When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in the Codes, such office ceases at the time the Codes take effect.

1887 R. S. Sec. 7.

LEGISLATURE MAY CHANGE OR ABOLISH OFFICE: The legislature can abolish or change an office created by it, and it may extend or abridge the

terms of its incumbents at pleasure.—*In re Bulger*, *In re Merrill*, 45 Cal. 553; see opinion of justices to the senate and house of representatives, 117 Mass. 603; *People ex rel. v. Lippencott*, 67 Ill. 333.

Section 9. Actions Commenced not Affected by Codes: No action or proceeding commenced before the Codes take effect, and no right accrued, is affected by their provisions, but the proceedings therein must conform to the requirements of the Codes as far as applicable.

1887 R. S. Sec. 8; Laws 1881, p. 1, Sec. 5.

IN PENDING ACTIONS WHAT PROCEEDINGS ARE FOLLOWED: When, in pending actions, proceedings have been taken prior to the taking effect of the Code of Civil Procedure, the sufficiency of such proceedings must be determined by the law in force at the time, and by no other rule.

—*Cantfield v. Doe* 45 Cal. 221; *Hancock v. Thorn*, 46 Cal. 643.

A proceeding to obtain a new trial is not initiated until the notice of the motion is served and filed, and such proceedings must be conducted in accordance with the Code of Civil Procedure, when the notice of the motion is served and filed after the Code went into effect.—*Kelly v. Larken*, 47 Cal. 48; *Macy v. Davila*, 48 Cal. 646.

Section 10. Limitations Continue to Run: When a limitation or period of time prescribed in any existing statute for acquiring a right, or barring a remedy, or for any other purpose, has begun to run before these Codes go into effect, and the same or any limitation is prescribed in these Codes, the time which has already run shall be deemed part of the time herein prescribed as such limitation.

1887 R. S. Sec. 9; Laws 1881, p. 2, Sec. 6.

Limitations: Code Civil Proc. Chap. CXXVI.

LIMITATION OF ACTION: In construing a statute of limitations, it must,

so far as it affects rights of action in existence when the statute is passed, be held, in the absence of a contrary provision, to begin when the cause of action is first subjected to its operation. —*Sohn v. Waterson*, 17 Wall. 596; *Hub-*

ner v. Zimmermann et al. (Oklahoma), 58 Pac. 737.

If the statute of limitations had commenced running as to a cause of action before the Codes took effect, it contin-

ued to run notwithstanding the taking effect of the Codes.—Benjamin v. Eldridge, 50 Cal. 612; Goillotel v. Mayor of the City of New York, 87 N. Y. 441.

Section 11. Holidays: Holidays within the meaning of these Codes are: Every Sunday, the first day of January, the twenty-second day of February, Friday following the first day of May, the fourth of July, the twenty-fifth day of December, every day on which an election is held throughout the state, and every day appointed by the president of the United States, or by the governor of this state, for a public fast, thanksgiving, or holiday.

1887 R. S. Sec. 10 and R. S. 1299 as amended 5th Ses. p. 133, Sec. 1; Laws 1881, p. 2, Sec. 7.

Courts not to be open on certain days: Code Civil Proc. Sec. 3017.

Section 12. Computation of Time: The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

1887 R. S. Sec. 11; Laws 1881, p. 2, Sec. 8.

COMPUTING TIME: Under Cal. Code of Civil Procedure, Section 12, providing that the time within which any act is to be done, is computed by excluding the first day and including the last, a notice of the hearing of an application for administration posted July 12 is sufficient as a ten days' notice to authorize a hearing, July 22.—Bates v. Howard, 105 Cal. 173, 38 Pac. 715.

Under a similar section, being Section 10 of the Civil Code of California, that court held that a note dated September 1, 1890, payable sixty days after date is due October 31, 1890; and in order to bind the endorser, must in the absence of excuse be presented on that date.—Rauer v. Broder, 107 Cal. 282, 40 Pac. 430.

Under a similar statute, the supreme court of Arizona has held where summons was served on April 11, and April 21 was on Sunday, a judgment by de-

fault entered on April 22 was premature, as defendant had all of the twenty-second to file his answer.—Pemberton v. Dureyea (Arizona), 43 Pac. 220.

And the supreme court of Oregon says that the five days within which to file statement of cost should be computed by excluding the first day, and also the last day where it falls on Sunday.—Nicklin v. Robertson, 28 Ore. 278, 42 Pac. 993; see also Scruton v. Hall (Kan. App.), 50 Pac. 964.

In computing the time allowed for filing the motion for a new trial, an intervening Sunday must be included.—Van Lear v. Kansas Triphammer Brick Works (Kan. Sup.), 56 Kan. 545, 43 Pac. 1134.

But where the undertaking on appeal is required to be filed within five days after service of notice of appeal, it may be filed on the sixth day, the fifth being Sunday.—Robinson v. Templar Lodge, No. 17, I. O. O. F. 114 Cal 41, 45 Pac. 998.

Section 13. Performance of Certain Acts, Holidays Excluded: Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

1887 R. S. Sec. 12; Laws 1881, p. 2, Sec. 9.

SUNDAY: Where an injury occurs to the plaintiff on the Sabbath day from the negligence of the defendant in not keeping its street in proper condition, the plaintiff is not required to show that he was engaged in a work of ne-

cessity at the time of the accident to entitle him to recovery, and a motion for non-suit on that ground is properly overruled.—Black v. City of Lewiston, 2 Idaho, 254, 13 Pac. 80.

The delivery of milk to his customers by a dairyman is a work of necessity and not within the inhibition of a law

forbidding any labor on Sunday other than works of necessity or charity.—*City of Topeka v. Hempstead*, 58 Kan. 328, 49 Pac. 87.

Teaching contracts for stated periods are subject to the observance of recognized holidays, and there should be no deductions for such occasions from the teacher's wages.—*School Dist. No. 4 v. Gage*, 39 Mich. 484.

A common carrier may give notice to consignee and discharge cargo on

holiday.—*Richardson v. Goddard*, 23 How. (U. S.), 40.

Where rent falls due on Sunday, suit therefor cannot be maintained until the next day.—*Byers v. Rothschild*, 11 Wash. 296 (39 Pac. 688).

Notice of a tax sale published only in a Sunday newspaper is void unless the statute authorizes service on Sunday.—*Schwed v. Hartwitz*, 23 Colo. 187, 47 Pac. 295.

Section 14. Seal Defined: When the seal of a court, public officer or person is required by law to be affixed to any paper, the word "seal," includes an impression of such seal upon the paper alone as well as upon wax or a wafer affixed thereto.

1887 R. S. Sec. 13; Laws 1881, p. 2, Sec. 10.

Seals of executive officers: Sec. 332.

Corporate seals, how affixed: Civil Code, Sec. 2729.

Sealed and unsealed instruments, distinction abolished: Civil Code, Sec. 2730.

Court seals: Code Civil Proc. Sec. 3024.

IMPRESSION, HOW MADE: The impression may be made with a pen as well as what is technically a stamp. The object is to give character to the instrument, and enable it to be distinguished and recognized for that which it was intended to be.—*Hastings v. Vaughn*, 5 Cal. 315.

Section 15. Majority may Act when Joint Authority Given: Words giving a joint authority to three or more public officers, or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

1887 R. S. Sec. 14; Laws 1881, p. 2, Sec. 11.

POWER OF MAJORITY OF QUORUM: The law is well settled that the action of a quorum is the ac-

tion of the board, and that a majority of the quorum present can do any act which a majority of the board if present might do.—*People v. Harrington*, 63 Cal. 257, and cases there cited.

Section 16. Words and Phrases, how Construed: Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed, according to such peculiar and appropriate meaning or definition.

1887 R. S. Sec. 15; Laws 1881, p. 2, Sec. 12.

STATUTORY CONSTRUCTION: It is a well-settled rule of statutory construction that all words and phrases used in a statute shall be understood and construed according to the approved and common use of the language and the same meaning shall be given to every word used. This rule is expressly recognized by our statute and declared to be a law of our state. It is equally, however, a well-settled rule of construction that if no sensible

meaning can be given to a word or phrase, or if it would defeat manifestly the real object of the enactment, it should be eliminated. Also that for the same reason, words may be rejected as surplusage; also to carry out the intention of the legislature another word may be read for the word used where the word used would manifestly defeat the legislative intent, and the substitution of the other would carry it out.—*Thomas v. City of Grand Junction* (Colo.), 56 Pac. 665.

Section 17. Certain Words, Defined and Construed: Words used in these Codes in the present tense, include the future as

well as the present; words used in the masculine gender, include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing, includes printing; oath includes affirmation or declaration, and every mode of oral statement, under oath or affirmation, is embraced by the term "testify;" and every written one in the term "depose;" signature or subscription includes mark, when the person cannot write, his name being written near it, and witnessed by a person who writes his own name as a witness.

The following words also have, in the Codes, the signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property," includes both real and personal property.
2. The words "real property," are co-extensive with lands, tenements and hereditaments, possessory rights and claims.
3. The words "personal property," include money, goods, chattels, things in action, and evidences of debt.
4. The word "month," means a calendar month, unless otherwise expressed.
5. The word "will" includes codicils.
6. The word "writ," signifies an order or precept in writing, issued in the name of the people, or of a court or judicial officer, and the word "process," a writ or summons issued in the course of judicial proceedings.
7. The word "State," when applied to the different parts of the United States, includes the District of Columbia and the Territories; and the words "United States," may include the District and Territories.

1887 R. S. Sec. 16; Laws 1881, p. 2, Sec. 13.

AN ORDER IS PERSONAL PROPERTY: An order drawn and accepted

is an evidence of debt and therefore personal property under subdivision 3 of this section.—Murphy v. Montandon, 2 Idaho, 1050, 29 Pac. 851.

Section 18. Repeal of Statutes—Effect: No statute law is continued in force because it is consistent with the provisions of the Codes on the same subject, but in all cases provided for therein, all statute laws heretofore in force in this state whether consistent or not with the provisions of the Codes unless expressly continued in force, are repealed and abrogated. This repeal or abrogation does not revive any former law heretofore repealed, nor does it affect any right already existing or accrued, or any action or proceeding already taken, except as in these Codes provided; nor does it affect any local or special statute not expressly repealed.

1887 R. S. Sec. 17; Laws 1881, p. 3, Sec. 14.

Cited in Cunningham v. George, 2 Idaho, 1202, 31 Pac. 809.

REPEALS, HOW MADE: A general statute without negative words will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent.—People ex rel. Springer v. Lytle, 1 Idaho, 143.

A statute clearly repugnant to a prior one necessarily repeals the former, although it does not do so in terms.—People ex rel Springer v. Lytle, 1 Idaho, 143.

Though a subsequent statute be not repugnant in all its provisions to a prior one, yet if the latter was clearly intended to provide the only rule that should govern in the case provided for,

it repeals the previous act.—*People ex rel. Springer v. Lytle*, 1 Idaho, 143; *Hess v. Trigg et al.* (Oklahoma), 57 Pac. 159.

Later statute revisory of entire matter of earlier one, and designed as substitute therefor repeals former statute though there be no inconsistencies between them.—*Mack v. Jastro* (Cal.), 58 Pac. 372.

In order for a subsequent act to repeal a former, it should appear from the last act that it was intended to take the place of or repeal the former, or that the two acts are so inconsistent that force and effect cannot be given to both.—In the matter of *Yick Wo*, 68 Cal. 294, 9 Pac. 139; citing *Ex parte Smith*, 40 Cal. 419, *Estate of Wixon*, 35 Cal. 320; *People v. Bent*, 43 Cal. 560; *People v. Sargent*, 44 Cal. 430.

Section 19. Codes Prima Facie Evidence of the Law: These Codes shall be received in all courts of this state as prima facie evidence of all the general laws of the State of Idaho existing and in operation at the date of their publication; and in pleading any of the statutes of this state in any court, the same may be referred to by naming the number of the section of the proper Code as the same are published in this codification.

1901, act creating new Code Commission, Sec. 8.

1901, 6th Ses. p. 57. Sec. 8.

Section 20. Common Law, when Rule of Decision: The common law of England, so far as it is not repugnant to, or inconsistent with the constitution or laws of the United States and of this state in all cases not provided for in these Codes, is the rule of decision in all the courts of this state.

1887 R. S. Sec. 18; Com. Laws 1875, p. 676; Laws 1863, 1st Ses. p. 527.

Common law offenses: Penal Code Sec. 5123.

HOW MUCH OF COMMON LAW APPLICABLE: The whole of the common law of England is not in force in this state. The intention of our legislature was to adopt only so much of it as was applicable to our condition. The statutes of the several states adopting the common law are generally construed as applying only in cases where that law is applicable to the habits and conditions of society and in harmony with the genius, spirit, and objects of our institutions. It is contrary to the spirit of the common law

itself to apply a rule founded on a particular reason to the law, when the reason utterly fails.—*Reno Smelting Works v. Stevenson*, 20 Nev. 269, 19 Am. St. Rep. 364, 21 Pac. 317.

The principles of equity are part of our common law. It is the very essence of common or customary law that it consists of those principles and forms which grow out of the customs and habits of the people; it is therefore involved in its very nature that only so much of the English law that is adapted to our circumstances and customs are properly recognized as part of our common law.—*Pennock's Estate*, 20 Pa. St. 268, 59 Am. Dec. 718; see also *Commonwealth v. York* (Mass.), 43 Am. Dec. 465.

POLITICAL CODE.

PRELIMINARY PROVISIONS.

Section 21. Title of Act and How Divided: This act shall be known as the Political Code of the State of Idaho, and whenever cited, enumerated, referred to or amended, may be designated simply as the Political Code, adding, when necessary, the number of the section. It is divided into nine titles as follows:

Title I. Territorial jurisdiction of the state over lands owned by the United States.

Title II. The government of the State.

Title III. General police and trade regulations.

Title IV. Elections.

Title V. Education.

Title VI. Public ways.

Title VII. Revenue.

Title VIII. Government of counties.

Title IX. Government of cities, towns and villages.

1887 R. S. Sec. 100; titles added by effect at the same time.
Commission.

The Revised Statutes were adopted 56 Pac. 264; Jolly v. Latah County
as a whole, at the same time, and took (Idaho), 48 Pac. 1063.

TITLE I.

Chap. 1. Territorial jurisdiction of the state over lands owned by the United States.

CHAPTER I.

Section.

22. Consent to United States to purchase, concurrent jurisdiction reserved.

Section.

23. Jurisdiction over lands and buildings belonging to the United States.

Section 22. Consent to United States to Purchase, Concurrent Jurisdiction Reserved: That pursuant to article one, section eight, paragraph seventeen, of the constitution of the United States, consent to purchase is hereby given and exclusive jurisdiction ceded to the United States over and with respect to all lands embraced within the military posts and reservations of Fort Sherman and Boise Barracks, together with such other lands in the state as may be now or hereafter acquired and held by the United States for military purposes, either as additions to the said posts or as new military posts or

reservations which may be established for the common defense; and, also, all such lands within the state as may be included in the territory of the Yellowstone National Park, reserving, however, to this state a concurrent jurisdiction for the execution, upon said lands, or in the buildings erected thereon, of all process, civil or criminal, lawfully issued by the courts of the state and not incompatible with this cession.

1899, 5th Ses. p. 22; 1891, 1st Ses. p. 40.

JURISDICTION OF UNITED STATES: The purchase of lands by the United States for public purposes, within the limits of a state does not of itself oust the jurisdiction of such state over the lands so purchased.—*U. S. v. Cornell*, 2 Mason, 60 (Circuit Court, Dist. R. I.)

The constitution of the United States, Article I, Section 8, Sub. 17, declares that congress shall have power to exercise "exclusive legislation" in all "cases whatever" over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings. When, therefore, a purchase of land for any of these pur-

poses is made by the national government, and the state legislature has given its consent to the purchaser, the land so purchased, by the very terms of the constitution, ipso facto, falls within the exclusive jurisdiction of congress and the state jurisdiction is completely ousted.—*U. S. v. Cornell*, 2 Mason, 60 (Circuit Court D. R. I.), cited in *People v. Collins* (Cal.), 39 Pac. 17.

A state may cede to the United States exclusive jurisdiction over a tract of land within its limits in a manner not provided for in the constitution of the United States; and may prescribe conditions to the cession, if they are not inconsistent with the effective use of the property for the purposes intended.—*Fort Leavenworth R. Co. v. Lowe*, 114 U. S. 525.

Section 23. Jurisdiction Over Lands and Buildings Belonging to the United States: That consent is given to any purchase already made, or that may hereafter be made, by the government of the United States, of any lots, or tracts of land, within this state for the use of such government, and to erect thereon and use such buildings, or other improvements, as may be deemed necessary by said government; and that over such lands and the buildings, or improvements, that are, or may be, erected thereon the said government shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon all process, civil or criminal, lawfully issued by the courts of this state and not incompatible with this cession.

1899, 5th Ses. p. 235; 1895, 3d Ses. p. 21. See note to preceding section.

TITLE II.

THE GOVERNMENT OF THE STATE.

Chap. II. Seat of Government.

Chap. III. Classification of Public Officers.

Chap. IV. Legislative Department.

Chap. V. Executive Department.

Chap. VI. Officers Connected with the Executive Department.

Chap. VII. Immigration, Labor and Statistics.

Chap. VIII. Judicial Department.

Chap. IX. Ministerial and Other Officers Connected with the Courts.

Chap. X. General Provisions Relating to Different Classes of Officers.

Chap. XI. State Boards.

Chap. XII. State Institutions.

Chap. XIII. State Lands.

Chap. XIV. Militia.

CHAPTER II.

SEAT OF GOVERNMENT.

Section.

24. Seat of government, where located.

Section 24. Seat of Government, where Located: The seat of government of this state is located at Boise, in the county of Ada.

1887 R. S. Sec. 105; Const. Art. X, Sec. 2; Laws 1864, 2d Ses. p. 427.

CHAPTER III.

DEPARTMENTS OF STATE GOVERNMENT.

Section.

25. Powers of government, how divided.

Section.

26. Public officers, how classified.

Section 25. Powers of Government, how Divided: The powers of government of this state are divided into three distinct departments, the legislative, executive and judicial.

New Sec. by Commission, compiled from Const. Art. II, Sec. 1.

LIMITATION OF POWERS: The constitution is a limitation upon the powers of the legislative department of the government; but it is to be regarded as a grant of powers to the other department. Neither the executive nor the judiciary therefore, can exercise any authority or power, except such as is clearly granted by the constitution.—*Field v. The People*, 3-2 Scam. (Ill.), 79; *People ex rel. Richardson v. Henderson*, 4 Wyo. 535, 22 L. R. A. 751, 35 Pac. 517.

While it is true that the executive and judicial departments of the state government are equal, co-ordinate, and independent branches, that the officers of one department are prohibited by the constitution from exercising any

powers or duties properly belonging to another, yet it does not logically follow that the judiciary is powerless to hear and determine whether the person discharging the duties of office of governor is disqualified by the constitution from holding the office.

This court, by entering a proceeding brought to test the right of the relator and the respondent to the office of governor, does not exercise nor assume to exercise any power belonging to the executive department. The sole object and purpose of this proceeding is to ascertain who, under the constitution and laws, is entitled to perform the duties of that office.—*State ex rel. Thayer v. Boyd*, 31 Neb. 682-705, 48 N. W. 739, 51 N. W. 602; see also *Attorney General v. Barstow*, 4 Wis. 750.

Section 26. Public Officers, how Classified: The public officers of this state are classified as follows:

Legislative.

Executive.

Judicial.

Ministerial officers, and officers of the courts.

This classification is not to be construed as defining the legal powers of either class.

1887 R. S. Sec. 110.

PUBLIC OFFICES: Public offices in this territory are not incorporeal hereditaments, nor have they the character or qualities of grants. They are agencies. They are voluntarily taken, and may, at any time, be resigned. They are created for the benefit of the public, and not granted for the benefit of the incumbent. Their terms are fixed with a view to public utility and convenience, and not for the purpose of granting emoluments, during that period, to the office holder. The prospective salary, or other emoluments of a public office are not the property of the officer nor the property of the state. They are not property at all. They are like daily wages unearned, and which may never be earned. The incumbent may die or resign and his place be filled and the wages earned by another.—*Gorman v. County Commissioners of Boise County*, 1 Idaho, 655; *Commissioners of Saline County v. Anderson*, 20 Kan. 298, 27 Am. Rep. 171; *Benoit v. Auditors of Wayne County*, 20 Mich. 176.

The weight of authority seems to be against these decisions.—See *In re Havird*, 2 Idaho, 652, 24 Pac. 542.

The supreme court of California in *Dorsey v. Smyth*, 28 Cal. 21, says: "The salary of an office is incident to the title, and payment of the salary to one in possession without the title will not prevent the one having title from receiving the salary," which ruling is affirmed in *Stratton v. Oulton*, 28 Cal. 51; *Carroll v. Siebenthaler*, 37 Cal. 195; *People v. Potter*, 63 Cal. 128; *Burke v. Edgar*, 67 Cal. 184, 7 Pac. 488; *Ward v. Marshall*, 96 Cal. 159, 30 Pac. 1113; *Mayfield v. Moore*, 53 Ill. 432; *Waterman v. Railroad Co.* 129 Ill. 669; *Kreitz v. Behrensmeyer*, 149 Ill. 503, 36 N. E. 983; which holds that if an officer de facto has received the salary, fees, and emoluments, he is liable therefor to the officer de jure in an action for money had and received. To the same effect is *State v. Carr*, 129 Ind. 57, 28 Am. St. Rep. 174, 28 N. E. 88; *McCue v. County of Watello*, 56 Iowa, 704, 41 Am. Rep. 139, 10 N. W. 248.

An office is a right to exercise a public or private employment and take the fees and emoluments thereunto belonging.—2 Bla. Com. 36.

What is office, and how distinguished from employment: See exhaustive notes on this subject in *Selby v. Alcorn*, 72 Am. Dec., notes and comments on page 179; see also *Enkel v. Edgar*, 63 Cal. 188.

Where a legislative act creates a public office, appoints the officer and appropriates money to pay his salary, a subsequent repeal of the act terminates both the office and the right of the appointee to any salary not already earned at the time of such repeal.—*Hall v. The State*, 39 Wis. 79.

PUBLIC OFFICER, WHO IS: The court will presume in absence of evidence to the contrary that one acting in a public office with apparent undisturbed possession has been regularly and rightly appointed.—*State v. Niel* (Kan. App.), 45 Pac. 623.

All persons by authority of law intrusted with the receipt of public money, or through whose hands money due to the public may pass to the treasury, are public officers, whether the service be general or special, transient or permanent.—*Commonwealth v. Evans*, 74 Pa. 124.

A person employed for a special and single object, in whose employment there is no enduring element, nor designed to be, and whose duties, when completed, although years may be required for their performance, ipso facto, terminate the employment, is not an officer in the sense in which that term is used in the constitution.—*Bunn et al. v. The People*, 45 Ill. 398.

DE FACTO OFFICER: A de facto officer is one who comes into a legal and constitutional office by color of a legal appointment or election. Even though the law under which such officer holds be unconstitutional or repugnant to the laws of congress, he would still be a de facto officer, and his title of office can only be inquired into by direct proceeding instituted for that purpose, and not by a collateral proceeding, as in habeas corpus.—*Territory ex rel. Parks*, 3 Mont. 425.

Where one claiming to have been elected to an office, took peaceable possession of the office at the commencement of the term and held the same for nearly two years, until within less than a month to the end of the term and until his death, he was a de facto officer and his death created a vacancy, whether or not his election was valid. *State v. Elliott*, 13 Utah, 471, 45 Pac. 346.

A city assessor, whose term has expired, but who remains in possession, having full control and exercising the functions of the office, is assessor de facto.—*Hale v. Bischoff*, 53 Kan. 301, 36 Pac. 752; *People v. Hecht*, 105 Cal. 621, 38 Pac. 941.

The acts of de facto members of a

board of fifteen freeholders chosen to prepare a city charter are valid as to the public and third parties until their right to their seats is judicially passed upon.—*People v. Hecht*, 105 Cal. 621, 38 Pac. 941; *State v. Cook*, 17 Mont. 529, 43 Pac. 928.

A de facto incumbent of a public office is subject to removal at any time, and cannot complain of an act by which such office is abolished.—*McAllister v. Swan* (Utah), 50 Pac. 812.

CHAPTER IV.

LEGISLATIVE DEPARTMENT.

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DESIGNATION, TERM OF OFFICE AND ELECTION OF MEMBERS.

Section 27. Membership of Legislature: The Legislature shall consist of a senate of twenty-one members and a house of representatives of forty-six members.

1899, 5th Ses. p. 132; changed to comply with 1901, 6th Ses. p. 28.

Limitation on maximum number: See Const. Art. III, Sec. 2.

Qualification of members: See Const. Art. III, Sec. 6.

Secret sessions prohibited: See Const. Art. III, Sec. 12.

POWER TO LEGISLATE GENERALLY: The state legislature has jurisdiction of all subjects on which its legislation is not prohibited.—See Cooley's Constitutional Limitations, p. 206, 6th Ed., and cases there cited.

The state having committed its whole law making power to the legislature, excepting such as is expressly or impliedly withheld by the state or federal constitution, it has plenary power for all purposes of civil government; and in the absence of any constitutional restraint expressed or implied, may act upon any subject within the sphere of the government. It is the sole judge as to whether any exigency or such cause exists as requires the enactment of a law, and in the absence of any constitutional restriction, as it makes a law, there is no authority in the government which can declare it void. In such case, a court has no power to arrest its execution, however unwise or unjust in the opinion of the court it may be, or whatever motives may have led to its enactment.—Kimball v. City of Grantsville (Utah), 57 Pac. 1.

The powers of the legislative assembly of a territory are discussed in *Innis v. Bolton*, 2 Idaho, 407, 17 Pac. 264; *Stevenson v. Moody*, 2 Idaho, 239, 12 Pac. 902.

SPECIAL CASES: The legislature has power to create new counties, and may authorize the governor to appoint county officers therefor, to serve until the election of county officers at the first biennial election held thereafter, and until such officers, so elected, qualify as by law required.—*Sabin v. Curtis*, County Treasurer (Idaho), 32 Pac. 1130.

The legislature have authority to provide by statute the maximum and minimum salary of county officers, and may vest in the board of county commissioners the discretionary authority of determining the amount of salary of county officers within the limit of such maximum and minimum salary, except

the salary of such county commissioners.—*Stookey v. Board of County Commissioners of Nez Perce County* (Idaho), 57 Pac. 312.

The legislature may change the manner of payment of warrants, may issue bonds payable at a different time than the original warrant, but they cannot by any provision relieve the territory of the obligation to pay. Any legislation of that kind would be "to impair the obligation of contracts" and would be simply void.—*Lamkin v. Sterling*, 1 Idaho, 92.

The exigencies of government require the prompt removal of corrupt or unfaithful officers, and the legislature of this state, under the constitution has full power to provide for summary removal of such officers.—*Ran-kin v. Jaumann* (Idaho), 36 Pac. 502; see *People v. Stuart*, 74 Mich. 411, 16 Am. St. Rep. 644, 41 N. W. 1091, which holds that legislatures may invest the governor with power of removal.

PARDON: An act of the legislative assembly of the territory remitting the penalty imposed in a criminal action, duly approved by the governor, held valid.—*People v. Stewart*, 1 Idaho, 546.

Note: See constitutional provision, Art. IV, Sec. 7, providing for board of pardons.

As to power of legislatures to grant pardons see note to *Singleton v. State* (Fla.), 34 L. R. A. 251, 22 So. Rep. 876.

LEGISLATURE CANNOT DELEGATE ITS POWERS: One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority. But it is not always essential that a legislative act should be a complete statute which must in any event take effect as law at the time it leaves the hands of the legislative department. A statute may be conditional and its taking effect may be made to depend upon some subsequent event. Affirmative legislation may in some cases be adopted of which the parties interested are at liberty to avail themselves or not at their option. In these cases, a legislative act is regarded as complete when it has passed through the constitutional formalities necessary to perfected legislation, notwithstanding its actually going into operation as law may depend

upon its subsequent acceptance.—See Cooley's Constitutional Limitations, p. 137, 6th Ed., and cases there cited.

The supreme court of California in *People v. McFadden*, 81 Cal. 489, 22 Pac. 851, in construing an act creating a new county says: "The legislature may pass a conditional statute and make the taking effect of its provisions to depend upon some subsequent event. And may provide a time within which an act must be done to carry the provisions of the statute into effect if done at all. Making certain provisions of the act to depend upon the vote of the people of the county does not delegate to the people the power to pass or repeal the act, the act being a valid statute from the time of its passage and approval and the legislature itself providing that if the provisions of the act are not accepted within the period named they shall not thereafter be carried into effect.

To the same effect sustaining local option laws, see *State v. Forkner*, 94 Ia. 11, 62 N. W. 683; *Fell v. State*, 42 Md. 110; *Feek v. Township Board*, 82 Mich. 424, 47 N. W. 37; see also Constitution of Idaho, Art. X, III, Sec. 3.

LIMITATIONS: The legislature has no authority to enact indirectly, what it is forbidden by the constitution to do directly, and a statute so enacted is in violation of the constitution, and is void, as in excess of legislative authority.—*State ex. rel. Richards, State Auditor, v. Armstrong et al.*, Board of Equalization (Utah), 53 Pac. 981.

Section 28. Term of Office: The senators and representatives shall be elected for the term of two years from and after the first day of December next following the general election.

1887 R. S. Sec. 116; amended 1899, 5th Sec. 14; Const. Art. III, Sec. 3.
Ses. p. 67, Sec. 2; 1891 1st Ses. p. 60,

Section 29. When Elected: The members of the legislature must be elected at the general election in the year nineteen hundred and two, and at the general election every two years thereafter.

1887 R. S. Sec. 117; amended 1899, 5th Ses. p. 34, Sec. 8; 1891, 1st Ses. p. 59, Sec. 8; date amended by Commission to conform to next general election after adoption of this Code.

Date of General Election: Sec. 770.

APPORTIONMENT.

Section 30. Apportionment: The apportionment of the two houses of the legislature is as follows:

The first senatorial district consists of the county of Ada, and shall elect one senator.

The second senatorial district consists of the county of Blaine, and shall elect one senator.

The third senatorial district consists of the county of Bannock, and shall elect one senator.

Under the provisions of Section 6, Article XV, state constitution, the legislature is prohibited from fixing "reasonable maximum rates to be charged for water under sale or rental."—*Wilson v. Perrault* (Idaho), 54 Pac. 617.

As Section 3, Article IX, of the state constitution declares that the permanent school fund shall forever remain inviolate and intact, and all interest thereon shall be expended in the maintenance of the schools of the state, the legislature is prohibited from enacting any law that would directly or indirectly divert either principal or interest to any other purpose.—*State vs. Fitzpatrick* (Idaho), 51 Pac. 112.

Section 22, Article V, of the constitution of Idaho fixes the maximum beyond which the legislature cannot go in fixing the jurisdiction of justices of the peace as to the value of property claimed or amount in controversy.—*Quayle v. Glenn et al.* (Idaho), 57 Pac. 308.

Under constitution, Article V, Section 25 (Art. III, Sec. 19, Idaho), forbidding the legislature to pass local or special laws for the management of common schools, a general law in character, but designed to authorize school districts organized under the general school laws to consolidate with others organized under special charter, is invalid, though it provides the method to be pursued in effecting the consolidation.—*In re Bill No. 9* (Colo.), 56 Pac. 173.

The fourth senatorial district consists of the county of Bear Lake, and shall elect one senator.

The fifth senatorial district consists of the county of Bingham, and shall elect one senator.

The sixth senatorial district consists of the county of Boise, and shall elect one senator.

The seventh senatorial district consists of the county of Canyon, and shall elect one senator.

The eighth senatorial district consists of the county of Cassia, and shall elect one senator.

The ninth senatorial district consists of the county of Custer, and shall elect one senator.

The tenth senatorial district consists of the county of Elmore, and shall elect one senator.

The eleventh senatorial district consists of the county of Fremont, and shall elect one senator.

The twelfth senatorial district consists of the county of Idaho, and shall elect one senator.

The thirteenth senatorial district consists of the county of Kootenai, and shall elect one senator.

The fourteenth senatorial district consists of the county of Latah, and shall elect one senator.

The fifteenth senatorial district consists of the county of Lemhi, and shall elect one senator.

The sixteenth senatorial district consists of the county of Lincoln, and shall elect one senator.

The seventeenth senatorial district consists of the county of Nez Perce, and shall elect one senator.

The eighteenth senatorial district consists of the county of Oneida, and shall elect one senator.

The nineteenth senatorial district consists of the county of Owyhee, and shall elect one senator.

The twentieth senatorial district consists of the county of Shoshone, and shall elect one senator.

The twenty-first senatorial district consists of the county of Washington, and shall elect one senator.

The several counties shall elect members of the house of representatives as follows:

Ada county, three members;

Blaine county, two members.

Bannock county, two members.

Bingham county, two members;

Bear Lake county, two members;

Boise county, two members;

Canyon county, two members;

Cassia county, one member;

Custer county, one member;

Elmore county, one member;

Fremont county, three members;

Idaho county, three members;
 Kootenai county, three members;
 Latah county, three members;
 Lemhi county, two members;
 Lincoln county, one member;
 Nez Perce county, three members;
 Oneida county, two members;
 Owyhee county, two members;
 Shoshone county, four members;
 Washington county, two members.

Any new county which may hereafter be created shall constitute a senatorial district and elect one senator, and shall elect one representative.

1901, 6th Ses. p. 28.

See Const. Art. XIX.

POWERS OF LEGISLATURE, APPORTIONMENT: The legislature is prohibited from passing an apportionment act which does not give substantially just and equal representation to the people of each county, based upon either the voting or the entire population, or upon some other fair basis.—*Ballentine v. Willey*, 2 Idaho, 1208, 31 Pac. 994.

Where an act creating two new counties out of territory heretofore comprised in two counties which were abolished by said act has been declared unconstitutional, an apportionment act

providing representation for the two new counties, and no representation for the counties which by said unconstitutional act were abolished, is also unconstitutional.—*Ballentine v. Willey*, 2 Idaho, 1208, 31 Pac. 994.

ACT CREATING BANNOCK COUNTY, NOT APPORTIONMENT LAW: The act creating Bannock county is not an apportionment law, in any sense, and neither grants nor takes away any legislative representation from said county, nor change the boundaries of any senatorial or representative district.—*Sabin v. Curtis*, County Treasurer (Idaho), 32 Pac. 1130.

MEETING AND ORGANIZATION OF THE LEGISLATURE.

Section 31. Place and Time of Meeting: The legislature must assemble at the seat of government on the first Monday after the first day of January nineteen hundred and three and every second year thereafter, and at other times when convened by the governor.

1887 R. S. Sec. 120; amended Const. Art. III, Sec. 8; date amended by Commission to conform to first meeting after adoption of this Code.

Power of governor to convene: Const. Art. IV, Sec. 9.

Compensation of members: Const. Art. III, Sec. 23.

Compensation of presiding officers: Const. Art. III, Sec. 23.

STATE LEGISLATURE, SESSIONS, COMPENSATION OF MEMBERS: Section 8, Article III, of the constitution designates the different sessions of the state legislature as follows: First, the first session; second, sessions to be held biennially after the first session, commencing on the first Monday after the 1st day of January, and every second year thereafter; third, sessions convened by the governor.

The first paragraph of Section 23, Article 3, of the constitution, applies to

the regular biennial sessions only as to the per diem compensation of members, and the aggregate of per diem allowances.

The second paragraph of said Section 23 fixes the per diem of each member, except the presiding officers, for the first session of said legislature, and for sessions convened by the governor and does not limit the aggregate of per diem allowances for the first session.—*Goodnight v. Moody*, 2 Idaho, 751, 26 Pac. 121.

The question of the existence of an extraordinary occasion of sufficient gravity to justify a call for an extra session of the legislature is to be determined by the governor alone in the exercise of his discretion as a sworn officer, and this discretion is not subject to challenge or review by the courts.—*Farrelly v. Cole*, 60 Kan. Sup. 356, 44 L. R. A. 464, 56 Pac. 492.

Section 32. Hour of Meeting, how Called to Order: At the hour of twelve o'clock m., on the day appointed for the meeting of any regular session of the legislature, the lieutenant governor must call the senate to order; *Provided*, That in his absence the secretary of the senate at the last session must call the same to order and preside until a president pro tempore is chosen or, in the absence of both said officers, the senior member present must perform said duties, and the speaker of the house of representatives of the last session, or in his absence, the chief clerk of the last session, must call the house to order and preside until a presiding officer is chosen; or, in case of the absence of both of said officers, the senior member present must perform said duty.

1887 R. S. Sec. 122; Laws 1879, 10th
Ses. p. 31; rewritten to conform to pro-
vision of Const. Art. 1V, Sec. 13, making

the lieutenant governor president of
the senate.

Section 33. List of Members Elect: Upon the day fixed by law for the assembling of the legislature, the secretary of state shall lay before each house a list of the members elected thereto, with the districts they represent in accordance with the returns in his office.

1899, 5th Ses. p. 56, Sec. 100; 1891, 1st
Ses. p. 91, Sec. 109.

Day fixed: See ante, Sec. 31.

Section 34. Who to Participate in Organization, Quorum: All members elect, present, having certificates of election from the secretary of state, and no other person, has the right to participate in the organization of the respective houses; and neither house must organize or transact any business, but must adjourn from day to day, until a majority of all the members authorized by law to be elected, are present.

1887 R. S. portion of Sec. 122, rewritten
to conform to provision of Laws of
1899, 5th Ses. pp. 55 and 56, Sec. 94 and
99, making it the duty of secretary of
state to issue certificates.

Quorum: Const. Art. III, Sec. 10.
Time given to organize: Const. Art.
III, Sec. 10.

Section 35. Certificate of Election Evidence of Membership: The certificate of election is prima facie evidence of the right to membership.

1887 R. S. Sec. 121.

Certificate of election, by whom is-
sued: Sec. 886.

Section 36. Oaths, who may Administer: The presiding officer of the senate and the presiding officer of the house of representatives may administer the oath of office to any member and to the officers of their respective bodies.

The members of any committee may administer oaths to witnesses in any matter under examination.

1887 R. S. Sec. 123, rewritten to
conform to Const. Art. III, Sec. 25.

Oath: Const. Art. III, Sec. 25.

LEGISLATIVE EMPLOYEES AND OFFICERS.

Section 37. Officers and Employees of the Senate:

The officers and employees of the senate shall consist of one secretary, one assistant secretary, one engrossing clerk, one assistant engrossing clerk, one enrolling clerk, one assistant enrolling clerk, one journal clerk, one chaplain, one sergeant-at-arms, one committee clerk, two pages, one doorkeeper and one janitor.

1899, 5th Ses. p. 3, Sec. 1; 1891, 1st Ses. p. 5, Sec. 1.

Section 38. Officers and Employees of the House:

The officers and employees of the house of representatives shall consist of one chief clerk, one assistant clerk, one enrolling clerk, one assistant enrolling clerk, one engrossing clerk, one assistant engrossing clerk, one chaplain, one sergeant-at-arms, one doorkeeper, two pages, one committee clerk and one janitor.

1899, 5th Ses. p. 4, Sec. 2; 1891, 1st Ses. p. 5, Sec. 2.

Section 39. How Chosen: All officers and employees of the senate and house provided for in this chapter shall be elected by the senate and house respectively.

1899, 5th Ses. p. 5, Sec. 6; 1891, 1st
Ses. p. 7, Sec. 6.

Each house to choose its own officers: Const. Art. III, Sec. 9.

Section 40. Additional Officers or Employees No additional number of officers or employees of the senate or house shall be elected or appointed unless on a two-thirds vote.

1899, 5th Ses. p. 6, Sec. 9; 1891, 1st Ses. p. 8, Sec. 9.

Section 41. Removal, how and for what Causes:

Any of the officers and employees mentioned in this chapter may be removed by a two-thirds vote of the members of the house in which they are connected for failure to perform the duties imposed upon them by this chapter, or for incompetency, or for conduct which shall, by each house, be deemed improper.

1899, 5th Ses. p. 5, Sec. 8; 1891, 1st Ses. p. 7, Sec. 8.

Section 42. Duties: It shall be the duty of the secretary of the senate to attend each day, call the roll, read the journals and bills, copy or to take charge of and superintend all copying necessary to be done for the senate.

It shall be the duty of the chief clerk of the house to attend each day, call the roll, read the journal and bills, and to copy or to take charge of and superintend all copying necessary to be done for the house.

It shall be the duty of the assistant secretary of the senate and the assistant clerk of the house to take charge of all bills, petitions and other papers presented to their respective houses, to file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the secretary of the senate and chief clerk of the house.

It shall furthermore be the duty of the secretary of the senate and the chief clerk of the house to keep a correct record of the proceed-

ings of each day for the purpose of having such proceedings entered in the journal by the journal clerks of their respective houses.

It shall be the duty of the journal clerk of the senate to record each day's proceedings in the journal, from which they shall be read by the secretary each day of meeting in order that they may be authenticated by the signature of the president.

It shall be the duty of the journal clerk of the house to perform all similar duties for the house which are required to be performed by the journal clerk of the senate.

It shall be the duty of the sergeant-at-arms of the senate and the sergeant-at-arms of the house to give a general supervision, under the direction of the presiding officers, of the senate and house chambers, with the rooms attached; to attend during the sittings of their respective bodies, execute their commands, together with all such proceedings issued by authority thereof, as shall be directed to them by their presiding officers.

They shall receive no other compensation for their services beyond their per diem, except actual expenses incurred in arrests made by them, and for traveling expenses for themselves or special messenger, which expenses so incurred, shall be paid from the contingent fund of their respective houses: *Provided*, That no messenger shall be employed by any officer of either house unless expressly authorized so to do by the house of which he is an officer.

They shall have power to appoint a deputy each on a vote of their respective houses.

It shall be the duty of the deputy sergeant-at-arms of each house to assist the sergeant-at-arms in the performance of his duties.

It shall be the duty of the doorkeeper of each house to prohibit all persons, except members of the legislature and state officers, employees and reporters and persons who may on invitation, be entitled to seats, from entering within the bar of the house of which he is doorkeeper, unless upon invitation, and to arrest for contempt all persons outside of the bar or in the gallery found engaged in loud conversation, or otherwise making a noise, to the disturbance of their respective houses.

It shall be the duty of the janitors to keep the furniture of their respective houses in good order, to clean and light lamps and perform such other duties as they may be directed to do, by the president of the senate or the speaker of the house.

It shall be the duty of the chaplains to open the proceedings in their respective houses with prayer.

1899, 5th Ses. p. 4, Sec. 4; 1891, 1st Ses. p. 6, Sec. 4. Each house shall keep a journal: Const. Art. III, Sec. 13.

Section 43. Preservation of Bills and Papers: It shall be the duty of the secretary of the senate and chief clerk of the house, at the close of each session of the legislature, to mark, label and arrange all bills and papers belonging to the archives of their respective houses, and to deliver the same, together with all the books of both houses, to the secretary of state, who shall certify to

the reception of the same; and upon the production of said certificate to the auditor of state, the auditor is authorized and directed to draw his warrant upon the treasurer in favor of the above named parties for the sum of twenty-five dollars each, and the treasurer is authorized to pay the same out of any money in the general fund not otherwise appropriated.

1899, 5th Ses. p. 5, Sec. 5; 1891, 1st Ses. p. 7, Sec. 5.

JOURNALS: The question whether the papers so delivered by the clerk to the secretary are correct or not is one which this court cannot entertain. The papers so delivered either are or are not the journals of the legislature; if they are not, then it is not the province of this court to question them or to make a journal for the legislature. That power is vested in the legislature

alone and is not a power conferred upon the courts.

The principle of law is settled beyond controversy that the court will not go behind the journal of the legislature to ascertain what was done by that body. The journal itself is conclusive, and if the journal is incorrect or improperly made up, it is for the legislature itself to correct it and not for the court.—Burkhart v. Reed, 2 Idaho, 470, 22 Pac. 1; see also Clough v. Curtis, 2 Idaho, 488, 22 Pac. 8.

Section 44. Certain Clerks under Direction of Presiding Officers:

The president of the senate and the speaker of the house may direct the assistant enrolling clerk and the assistant engrossing clerk to aid in copying bills, messages or other lengthy documents, when they are not otherwise employed.

1899, 5th Ses. p. 5, Sec. 7; 1891, 1st Ses. p. 8, Sec. 7.

Section 45. Compensation of Employees: There shall be paid to the several officers and employees named in this chapter for all services rendered by them under the provisions of this chapter the following sums, and no more:

The secretary of the senate, seven (7) dollars per day.

The assistant secretary of the senate, six (6) dollars per day.

The chief clerk of the house, seven (7) dollars per day.

The assistant chief clerk of the house, six (6) dollars per day.

All other clerks of the two houses shall receive five (5) dollars per day.

The sergeant-at-arms of the senate and the sergeant-at-arms of the house, each, six (6) dollars per day.

The doorkeepers of the senate and house, each, five (5) dollars per day.

The messengers, each, three (3) dollars per day.

The pages, each, three (3) dollars per day.

The janitors, each, four (4) dollars per day.

The journal clerks, each, five (5) dollars per day.

The chaplains, each, two (2) dollars per day.

1899, 5th Ses. p. 4, Sec. 3; 1891, 1st Ses. p. 5, Sec. 3.

THE WORK DAY, MEANING OF: They (the employees) are not paid by the amount of work which they do, but by the day. And it is too clear for discussion that the word "day," as now in the statute, covers whatever period of the twenty-four hours the legislators

choose to remain in session.—Robinson v. Dunn, 77 Cal. 473, 19 Pac. 878.

The officers and clerks of the legislature do not contract to render service during certain limited hours, but to render service whenever required of them.—State v. Cheetham (Wash.), 58 Pac. 771.

Section 46. Per Diem Commences When: The per diem of all officers fixed by this chapter shall date from the day on which they shall have been elected and qualified.

1899, 5th Ses. p. 6, Sec. 10; 1891, 1st Ses. p. 8, Sec. 10.

CONTESTING ELECTION OF MEMBERS AND OF EXECUTIVE OFFICERS.

Section 47. The Legislature to Hear and Determine: The legislature, in joint meeting, shall hear and determine cases of the contested election of all officers of the executive department. The meeting of the two houses to decide upon such elections shall be held in the house of representatives, and the speaker of the house shall preside.

1899, 5th Ses. p. 61, Sec. 122; 1891, 1st Ses. p. 98, Sec. 135.

See Const. Art. IV, Sec. 2.

Action for usurpation of officer: Code Civil Proc. Chap. CXLIV.

CONTESTING ELECTIONS, CONCURRENT REMEDIES: While the constitution declares the contests of the election of officers of the executive department are to be tried by the legislature, the same instrument confers jurisdiction and quo warranto upon the supreme court. It was not the intention of the framers of the constitution that the remedy by contest should impair the right of the judiciary to inquire into the authority by which any person assumes to exercise the duties of the office of the executive department and to remove him therefrom if he is constitutionally ineligible to be elected or to hold such office.—*State ex rel Thayer v. Boyd*, 31 Neb. 682-706, 48 N. W. 739, 51 N. W. 602.

See also *People v. Holden*, 28 Cal. 124, where the court held that the act providing the mode for contested elections conferred upon any elector of the proper county the right to contest the

election of any person, who had been declared publicly elected to a certain office, to be exercised in and for such county. But that this grant of power to the elector in no way impairs the right of the people in their sovereign capacity to inquire into the authority by which any person assumes to exercise the functions of any office, and to remove him therefrom, if it was made to appear that he was an usurper and without legal right thereto.

The supreme court of Montana in *State v. Fränsham*, 19 Mont. 273, 48 Pac. 1, holds that the contested election statute and the remedy by quo warranto remain as concurrent remedies. To the same effect is *Snowball v. People*, 147 Ill. 260, 35 N. E. 538.

Contra: It has been held in Ohio and Pennsylvania that where a specific mode of contesting elections has been provided by statute, that mode alone can be resorted to, and that the common law mode of inquiry by proceedings and quo warranto will not be entertained.—*State v. Marlow*, 15 Ohio St. 114; *Commonwealth v. Leech*, 44 Pa. St. 322.

Section 48. Who may Contest: The right of any person declared elected to a seat in the legislature may be contested by any qualified voter of the county or district to be represented by such person.

1887 R. S. Sec. 125.

Qualified voters: Sec. 786.

Section 49. Each House to Hear and Determine: The senate and house of representatives shall severally hear and determine contests of the election of their respective members.

1899, 5th Ses. p. 61, Sec. 123; 1891, 1st Ses. p. 98, Sec. 136.

Each house to judge of election, qualifications and returns of its own members: Const. Art. III, Sec. 9.

Section 50. Notice of Contest, how and when Given: Whenever any elector of this state chooses to contest the validity of the election of any of the officers of the executive department of the

state, or whenever any elector of the proper county or district chooses to contest the election of any member of the legislature from such county or district, such person shall give notice thereof, in writing, and leave a copy thereof with the person whose election he intends to contest, within twenty days after the election; if the person cannot be found in his district then a copy to be left at his last place of residence in the district, naming the points on which the election shall be contested, and the name of some person authorized by law to administer oaths, selected by him to take the depositions, and the time and place for the taking of the same the adverse party may also select one such person on his part to attend at the time and place of taking such depositions.

1899, 5th Ses. p. 61, Sec. 127; 1891, 1st Ses. p. 99, Sec. 140.

Section 51. Length of Service; Testimony, how Taken:

The notice provided for in the preceding section shall be served at least ten days before the day fixed for the taking of depositions. The said two persons selected as aforesaid to take the depositions shall proceed jointly, or in default of either one of such persons to attend at the time and place fixed upon, the one attending shall proceed to hear and reduce to writing the testimony of all witnesses who may be produced by either of said parties, and may adjourn from day to day until all said testimony shall have been taken and reduced to writing: *Provided*, That such testimony shall be finally closed on or before the 29th day of December following.

1899, 5th Ses. p. 61, Sec. 128; 1891, 1st Ses. p. 99, Sec. 141.

Section 52. Testimony must be Relevant; how Transmitted:

No testimony shall be received by the person officiating at the taking of the depositions on the part of the contestant which does not relate to the points specified in the notice, a copy of which notice shall be delivered to the person or persons so officiating, and said testimony, together with a copy of the notice, when taken, shall be certified by the person or persons before whom the same is taken, enveloped, sealed up, indorsed "depositions taken in the matter of the contest of the election of A. B. to the office of," and directed to the secretary of state, who shall preserve the same, unopened, till the meeting of the legislature.

1899, 5th Ses. p. 62, Sec. 129; 1891, 1st Ses. p. 100, Sec. 142.

Section 53. Ballots and Poll Books, how Obtained and Transmitted:

If, at the time of taking depositions to be used before the legislature, or either branch thereof, in the case of a contested election, the notice shall allege that it is necessary for the determination of such contest that the ballots or the poll books of any election district or districts should be inspected, the officer or officers before whom such depositions shall be taken shall, on the request of either party to the contest, issue an order requiring the county auditor, or other person in whose custody or possession the ballots or poll books may be, naming the district or districts mentioned in the

notice, to deliver them to the person or persons therein named, who shall deliver them to the person or persons issuing such order. Such officer or officers shall transmit such ballots or poll books, unopened, in the same envelope with the depositions, as provided in the preceding section.

1899, 5th Ses. p. 62, Sec. 130; 1891, 1st Ses. p. 100, Sec. 143.

Section 54. Papers Relating to, to be delivered to Legislature: On the second day of the organization of the legislature, the secretary of state shall deliver to the speaker of the house all papers relating to the contested elections of executive officers, and to the presiding officers of each house all papers relating to contested elections of the members of their respective houses.

1899, 5th Ses. p. 62, Sec. 131; 1891, 1st Ses. p. 100, Sec. 144.

Section 55. Duties of Legislature upon Reception of Papers: Upon the reception by such presiding officers of papers relating to contested elections, they shall immediately give notice to their respective houses that such papers are in their possession. Where the papers relate to the contest of an executive state officer, the house of representatives shall notify the senate, and a day shall be fixed by both houses, by concurrent resolution, for the uniting of the two houses to decide upon the same, in which decision the yeas and nays shall be taken and entered upon the journal.

1899, 5th Ses. p. 62, Sec. 132; 1891, 1st Ses. p. 100, Sec. 145.

Section 56. Papers, Ballots and Poll Books, Disposition of: The papers relating to any such contest shall be opened only in the presence of the body by the presiding officer, to whom the same shall be delivered. If ballots or poll books are contained therein, they shall after being opened, remain in the custody of such presiding officer, subject to the inspection of the members, unless they shall by vote be temporarily committed to the chairman of a committee, in which case such chairman shall return them to the proper presiding officer; and they shall, upon the decision of the contest, be again sealed up in an envelope and returned by mail or otherwise to the office of the county auditor in which they were first required to be filed.

1899, 5th Ses. p. 62, Sec. 133; 1891, 1st Ses. p. 101, Sec. 146.

Section 57. Preservation of Evidence: All the evidence in any contest provided for in the last preceding section, except ballots or poll books, shall, after a decision thereof, be preserved in the office of the secretary of state.

1899, 5th Ses. p. 63, Sec. 134; 1891, 1st Ses. p. 101, Sec. 147.

Section 58. Other Evidence may be Taken by House or Senate: The house before which the contest is pending may take such other evidence in the case as it deems material.

1887 R. S. Sec. 143.

Section 59. No Costs to be allowed to Either Party: No payment must be made by the legislature or by either house

thereof, to either party to a contested case, for expenses incurred in prosecuting or defending the same.

1887 R. S. Sec. 144; Laws 1881, 11th Ses. p. 262.

Section 60. Fees of Officers Performing Services:

Officers performing services, in a contested election case, may charge and collect from the party at whose instance such services were performed, the same fees as are allowed for similar services in civil cases.

1887 R. S. Sec. 139; Laws 1881, 11th Ses. p. 261, Sec. 21. Fees: Political Code, Chap. LXVI.

ATTENDANCE AND EXAMINATION OF WITNESSES IN CONTESTED ELECTIONS.

Section 61. Application for Subpœna, to whom Made:

When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena, to any district judge of the state, the probate judge, or any justice of the peace, notary public, mayor, recorder, or other civil officer authorized to administer oaths within the county where the witness resides or may be found.

1887 R. S. Sec. 131; Laws 1881, 11th Ses. p. 260, Sec. 13.

Section 62. Officer Must Issue Subpœna:

The officer to whom the application authorized by the preceding section is made, must thereupon issue his writ of subpoena, directed to all such witnesses as are named to him, requiring their attendance before the officer named in the notice, at some time and place named in the subpoena, in order to be examined respecting the contested election.

1887 R. S. Sec. 132; Laws 1881, 11th Ses. p. 260, Sec. 14.

Section 63. Refusal or Neglect of Witness to Attend,

Penalty: Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, forfeits the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpoena was issued, and for his use, and shall be punished as provided in section 4610 of the Penal Code.

1887 R. S. Sec. 134; Laws 1881, 11th Ses. p. 261, Sec. 16; latter part rewritten to conform to plan of Commission that no crimes shall be enumerated in this Code.

Section 64. Witness to be Examined on Oath:

All witnesses who attend in obedience to a subpoena, or who attend voluntarily, at the time and place appointed, of whose examination notice has been given, as provided in this chapter must then and there be examined on oath by the officer before whom the depositions are to be taken.

1887 R. S. Sec. 135; Laws 1881, 11th Ses. p. 261, Sec. 17.

Section 65. Production of Papers:

The officers have power to require the production of papers; and the refusal or neglect of any person to produce and deliver up any paper or papers in his

possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same, in case they be official papers subjects such person to punishment as provided in section 4610 of the Penal Code.

1887 R. S. Sec. 137; Laws 1881, 11th Ses. p. 261, Sec. 19.

Section 66. Fees and Mileage of Witnesses: Every witness attending by virtue of any subpoena herein directed to be issued is entitled to receive the sum of two dollars for each day's attendance, and the further sum of twenty-five cents for every mile necessarily traveled in going and returning; such allowance must be ascertained and certified by the officer taking the examination, and paid by the party at whose instance such witness was summoned.

1887 R. S. Sec. 138; Laws 1881, 11th Ses. p. 261, Sec. 20.

ATTENDANCE OF WITNESSES BEFORE EITHER HOUSE OF THE LEGISLATURE.

Section 67. Subpœna, by whom Issued, Contents: A subpoena requiring the attendance of any witness before either house of the legislature or a committee thereof may be issued by the president of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness is desired; and it is sufficient if:

1. It states whether the proceeding is before the senate or house, or a committee;
2. It is addressed to the witness;
3. It requires the attendance of such witness at a time and place certain;
4. It is signed by the president of the senate, speaker of the house, or chairman of a committee.

1887 R. S. Sec. 145.

Section 68. Subpœna, by whom Served: The subpoena may be served by any person who might be a witness in the matter, and his affidavit that he delivered a copy to the witness is evidence of service.

1887 R. S. Sec. 146.

Section 69. Witness Disobeying Subpœna, Contempt: If any witness neglects or refuses to obey such subpoena, or appearing, refuses to testify, the senate or house may, by resolution entered on the journal, commit him for contempt.

1887 R. S. Sec. 147.

POWER TO COMMIT WITNESS: The legislature has power to commit a witness, as for contempt, who refuses to answer questions propounded to him touching the inquiry then before the senate or assembly, or any committee of either.—Ex parte D. O. McCarthy, 29 Cal. 396. And in the contempt proceedings he is not entitled to the aid of

counsel.—Id.; In re Flavey & Kilbourn v. Massing, 7 Wis. 630.

The power of the senate to investigate the charges in question, to summon and examine petitioner as a witness and to commit him as for contempt for refusing to answer questions propounded to him, does not admit of a doubt.—Ex parte D. O. McCarthy, 29 Cal. 395, 407; Ex parte Lawrence, 116 Cal. 299, 48 Pac. 124.

Section 70. Sergeant-at-arms may Arrest Absenting Witness: Any witness neglecting or refusing to attend in obedience to subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize such arrest is a copy of a resolution of the senate or house, signed by the presiding officer, and countersigned by the secretary or clerk.

1887 R. S. Sec. 148.

Section 71. Statement of Witness not Evidence in Criminal Proceedings: No statement made by any such witness on such examination before either house, or a committee, is competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper, touching which he is examined, for the reason that his testimony or the production of such paper may tend to disgrace him or render him infamous.

Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

1887 R. S. Sec. 149.

ENACTMENT OF STATUTES.

Section 72. Endorsement of Date on Bill Delivered to Governor: Every bill must, as soon as delivered to the governor, be indorsed as follows: "This bill was received by the governor this day of nineteen"

1887 R. S. Sec. 150.

Manner of passing bills: Const. Art. III, Sec. 15.

STATUTES, ENACTMENT, CONSTITUTIONAL REQUIREMENTS, ENROLLED BILL, LEGISLATIVE JOURNALS, CONCLUSIVENESS: 1. The provisions of the constitution requiring three several readings, the printing of bills, and aye and nay vote on final passage of any bill, are mandatory.

2. To ascertain whether or not the legislature, in the passage of a bill, complied with the requirements of the constitution, the court may go back to the enrolled bill to see if the journals of both house of the legislature show that the requirements of the constitution were obeyed in the passage of the act in question.

3. The journals of both houses of the legislature must affirmatively show that the requirements of the constitution in regard to the passage of any law were substantially followed by the legislature in the passage of an act the validity of which is questioned.

4. While the journals of both houses of the legislature are entitled to absolute verity, and cannot be contradicted, yet, if the journals fail to show that any step required by the constitution

in the passage of a law was taken, such failure to show that such step was taken is conclusive evidence that it was not taken.

5. Neither house of the legislature can suspend the provision of the constitution which requires three readings on separate days in each house except in case of urgency, and then only on an aye and nay vote by two-thirds of the house, voting with reference to only one bill then before such house. Sullivan, C. J., dissenting.—Cohn v. Kingsley (Idaho), 49 Pac. 985; Brown v. Collier et al. (Idaho), 51 Pac. 417.

In *People ex rel. Attorney General v. Alturas County* (Idaho), 55 Pac. 1067, an attempt was made to raise the question of the regularity of the passage of the act creating Blaine county, and the supreme court declined to inquire into the regularity of the passage of said act for the reason that cases affecting said county had been before said court and no question was raised as to the validity of said act.

In declining to inquire into the matter, the court says: "We feel that it is our duty, under the circumstances of this case, taking into consideration the nature of the act in question, the long continued acquiescence in, and recognition of the validity of said act both

by the state and the people residing in the defendant county to hold that the state is now estopped from questioning the regularity of the act in question."

When there was a doubt as to whether a bill was amended in the house after it had passed the senate,

and whether or not the latter had concurred in the amendments so made. Held that the bill having been duly enrolled and approved by the governor, its validity cannot be impeached except by evidence of the clearest and most undoubted character.—*Chesney v. McClintock* (Kan. Sup.), 58 Pac. 993.

Section 73. Manner of Approving Bill: When the governor approves a bill he must set his name thereto, with the date of his approval.

1887 R. S. Sec. 151.

SIGNING A BILL INADVERTENTLY: The fact that the governor inadvertently signed and approved an act of the general assembly, which signing and approval has been announced by his private secretary, in his routine of business, but without the knowledge of the governor, and the

governor discovered his mistake, and sent a second messenger to recall the first, it will not be considered either a signing or a return, though the act may have been delivered to an officer of the general assembly. A power to rectify an error at the proper time exists with all departments of government.—*The People v. Hatch*, 19 Ill. 282.

Section 74. Bills Passed over Veto, How Authenticated: When a bill has passed both houses of the legislature and is returned by the governor without his signature and with objections thereto, and upon a reconsideration passes both house by a two-thirds vote, it must be authenticated as having become a law by a certificate indorsed thereon, or attached thereto in the following form:

"This bill having been returned by the governor with his objections thereto, and after reconsideration having passed both houses, by a two-thirds vote, it has become a law, this day of A. D.," which indorsement, signed by the president of the senate, and speaker of the house, is a sufficient authentication thereof. Such bill must then be deposited with the laws, in the office of the secretary of state.

1887 R. S. Sec. 152.

Veto power: Const. Art. IV, Sec. 10.

AUTHENTICATION AND DEPOSIT OF BILL PASSED OVER VETO: After a bill has passed both houses of the legislature, and has received its constitutional majority, the governor, acting in a ministerial capacity must authenticate the same, and mandamus will lie to compel the performance of this ministerial duty.

The functions of both the legislature in making the law, and the executive in the exercise of the qualified veto power conferred upon him, must have

been completely exhausted before the duty of authentication and deposit in the secretary of state's office can be assumed to have begun. The power to withhold the possession of a bill, which has passed both houses of the legislature in the proper form of legislative proceeding, and has thereby become a law under the operation of the constitution, either with or without the executive signature, is one which is unknown to our people, and has no place in the system of government prevailing here.—*Harpending, petitioner, v. Haight* (Governor of the State of California), respondent, 39 Cal. 189.

Section 75. Return of Bill by Governor when House not in Session: If, on the day the governor desires to return the bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, clerk, or any member of such house and such delivery is as effectual as though returned in open session,

if the governor, on the first day the house is again in session, by message notifies it of such delivery and of the time when, and the person to whom such delivery was made.

1887 R. S. Sec. 153.

Time of return: Const. Art. IV, Sec. 10.

RETURN, HOW MADE: The above section prohibits the legislature destroying the right of veto by adjourning day to day. If the legislature has adjourned for the day, or for three days, it still has an organized existence as a

legislative body, with its president, secretary, and other officers, to whom, under such circumstances, a substantial delivery of the bill and message might have been made, and whose official duty it would be to place the bill and message before the senate at as early a time as might be thereafter.—*Harpending v. Haight*, 39 Cal. 189.

Section 76. Bills Remaining with Governor more than Five Days, How Authenticated: Every bill which has passed both houses of the legislature, and has not been returned by the governor within five days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of the state in the following form: "This bill having remained with the governor five days (Sundays excepted), and the legislature being in session, it has become a law this day of A. D.," which certificate must be signed by the secretary of state and deposited with the laws in his office.

1887 R. S. Sec. 154; changed from three to five days by Const. Art. IV, Sec. 10.

COMPUTING THE PERIOD OF FIVE DAYS: In the case of *Price v. Whitman*, 8 Cal. 412, it was there declared that the ten days (given in the constitution of the state of California), must be computed by excluding the day on which the bill was presented to the governor.—*Iron M. Co. v. Haight*, 39 Cal. 540.

Should a question arise as to whether a certain act became a law, and the material point be as to the time of its delivery to the governor for his action, then the governor may be compelled by the courts to appear and testify as to the time the act was delivered to him.—*Thompson v. The German Valley R. R. Co.* 22 N. J. Eq. 111.

Computation of time: See note to Section 12, ante.—*People v. Hatch*, 15 Ill. 9.

OPERATION OF STATUTES.

Section 77. When Statutes Take Effect: Every statute, unless a different time is prescribed therein, takes effect on the sixtieth day after the end of the session.

1887 R. S. Sec. 155; Laws 1868, 5th Ses. p. 162; 1864, 1st Ses. p. 515; amended by constitutional provision Art. III, Sec. 22.

"PASSAGE OF THE ACT," HOW CONSTRUED: The question whether an act was barred by the statute of limitations depended upon construction to be given to the language contained in the act, which stated that "when the cause of action has already accrued, the party entitled and those claiming under him, shall have after the passage of this act, the whole period herein prescribed in which to commence an action;" and it was held that the words "passage of the act" must be construed to mean the time when the act takes effect.—*Schneider v. Hussey*, 2 Idaho, 12, 1 Pac. 343.

INTERPRETATION AND CONSTRUCTION OF STATUTES: Note.

The following decisions from the supreme court of Idaho are grouped here for convenience and as probably the most logical place for their arrangement, constituting as they do the rules of interpretation and construction of all the Codes and legislative acts rather than of any particular section.

A strained construction of the constitution is not required nor permitted in order to work the repeal of statutes not clearly repugnant thereto. It is the duty of the court to give both the statutes and the constitution such construction as will give effect to both, unless the statute is so clearly repugnant to the constitution as to admit of no other reasonable construction.—*Doan v. Board of County Commissioners of Logan County*, 2 Idaho, 781, 26 Pac. 167.

The maxim *expressio unius est exclusio alterius* is to be applied to the interpretation of statutes as well as to

contracts.—*People v. Goldman*, 1 Idaho, 714.

Statutes should be so construed as to give force and effect to each and every part thereof, if it is possible to do so.—*People ex rel. Huston v. Hunt*, 1 Idaho, 433; *Hedges v. Commissioners*, 4 Mont. 280, 1 Pac. 748; *State v. Cave*, 52 Pac. 200.

In construing a statute, or any section or portion of it, the whole must be considered; the different parts reflect light on each other; and, if possible, such a construction is to be made as will avoid any contradiction or inconsistency.—*People v. Ah Ho*, 1 Idaho, 691.

In construing statutes words are to be understood in their general signification, and when any doubt arises, although the doubt attaches only to a particular clause, the whole act is to be taken and examined together, in order to arrive at the true legislative intent.—*People v. Owyhee Mining Company*, 1 Idaho, 409.

It is a maxim of interpretation that in ambiguous things, such a construction is to be given to the statute, that what is inconvenient and absurd is to be avoided.—*Greathouse v. Heed*, 1 Idaho, 494.

When we know the reason, which alone determines the will of the law makers, we ought to interpret and apply the words in a manner suitable and consonant to that reason, and as will be best calculated to effectuate the intent.—*Greathouse v. Heed*, 1 Idaho, 494.

Where a particular construction of a statute applied to a case, which it seems by its terms to include, there follows from such construction an absurd consequence; respect for the legislature will induce the court from thence to conclude that some other construction, which will not produce such a consequence, ought to be adopted; hence every instruction which leads to an absurdity ought to be rejected.—*Chandler v. Lee*, 1 Idaho, 349; *In re Mitchell* (Cal.), 52 Pac. 799.

Acts of the legislature are not to be construed retrospectively, so as to take away vested rights, although they may alter or modify the remedy, nor can a healing act affect existing judgments.—*People v. Moore*, 1 Idaho, 662.

Neither courts nor assessors have any discretion in the construction of statutes, when their provisions and requirements are easily understood.—*People v. Owyhee Lumber Company*, 1 Idaho, 420.

Different acts passed by the legislature on the same day, upon the same subject matter, will be read together as parts of the same act.—*Chandler v. Lee*, 1 Idaho, 349.

It is the duty of courts to execute laws according to their true intent and meaning; and that intent, when collected from the whole and every part of the act, must prevail over the literal sense of the terms, and control the strict letter of the law when the letter would lead to possible injustice, contradiction or absurdity.—*Chandler v. Lee*, 1 Idaho, 349.

Courts will not pass upon the validity of a statute in any case unless necessary to a decision of the case under consideration.—*Howell v. Board of Commissioners of Ada County (Idaho)*, 53 Pac. 542.

In the interpretation of statutes, the true meaning of the law maker must be ascertained from the whole purview, and when that is manifest from a judicial inspection, the court will not permit punctuation to change it. To ascertain the real intention and meaning of the statute, the court will punctuate or disregard punctuation, as may be necessary. — *Union Refrigerator Transit Co. v. Lynch*, County Treasurer (Utah), 55 Pac. 639.

A general rule for the construction of statutes is that, where a part of an act has been repealed, it must, although of no operative force, still be taken in construing the rest.—*Ogden City v. Boreman* (Utah), 57 Pac. 843.

PROVISO: A proviso in a statute is to be strictly construed. Its province is not to enlarge or change the purpose of the enacting clause; and its terms may be limited by the general scope of the enacting clause to avoid repugnancy.

But some effect should be given to a proviso, if possible; but if, by so doing, the manifest intention of the act, as gathered from its general scope and the circumstances connected with its passage, will be defeated, or should the meaning of the proviso be such as to leave the court in doubt respecting its aim, then there is no alternative but to reject it as of no validity.—*Greathouse v. Heed*, 1 Idaho, 494; *Pond v. Maddox*, 38 Cal. 572.

TITLE: An act entitled "An Act to regulate the sale of intoxicating liquors in less quantities than one quart" was passed by the house of representatives and transmitted to the senate. By senate amendments to said act, all that part of said act referring to the sale of intoxicating liquors in quantities less than one quart, was stricken out. Thereafter the bill was returned to the house as amended by the senate, which amendments were concurred in by the house. Thereafter the title of the act was amended by the house by striking out the words following, to-wit, "in less quantities than one quart." After such title was so amended the bill was not

transmitted to the senate for its concurrence in said amendment, but was properly enrolled with the title as amended by the house, and thereafter approved by the governor. Held, that the amendment of the title as made by the house, was not one of substance, and did not invalidate said act. The subject of said act is fairly indicated by the title and said title is comprehensive enough to include the provisions contained in said act in regard to a license tax.—*State v. Doherty*, 2 Idaho, 1105, 29 Pac. 855.

ACT VOID IN PART, EFFECT: When an act having but one object is in part valid, and in part invalid, and the parts are so mutually connected with and dependent upon each other, as to conditions, considerations, or compensations for each other as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect, the legislature would not have passed the residue independently, the act must be held void.—*Ballentine v. Willey*, 2 Idaho, 1208, 31 Pac. 994.

SUBSEQUENT STATUTE REPUGNANT: Where a subsequent statute is repugnant to a prior one, the latter operates without any repealing clause, as a repeal of the former, or where not repugnant, if it clearly appears from the latter that it was intended as a revision or substitute for the former, it will repeal it so far as revised or substituted.—In the matter of *Yick Wo*, 68 Cal. 294, 9 Pac. 139; *Pierpont v. Crouch*, 10 Cal. 315.

REPEAL OF STATUTE BY IMPLICATION, LAW DOES NOT FAVOR: The law does not favor the repeal of statutes by implication, and where there is apparent conflict between two acts, the court should reconcile them if possible, but if this cannot be done, then the last act must govern.—In the matter of *Yick Wo*, 68 Cal. 294, 9 Pac. 139; cited, *Schofield v. White*, 7 Cal. 400; *People v. R. R. Co.* 28 Cal. 254.

The repeal of a statute should not be implied by the mere enactment of another statute providing a different method of doing the same thing, unless the method provided in the latter statute is irreconcilable with, and destructive of, the method provided in the former statute for doing the same thing.—*Hess v. Trigg et al.* (Oklahoma), 57 Pac. 159.

"The invariable rule of construction in respect to the repealing of statutes by implication is that the earlier act remains in force, unless the two are manifestly inconsistent with and repugnant to each other, or unless some express notice is taken of the former, plainly indicating an intention to abro-

gate it."—In *re Mitchell* (Cal.), 51 Pac. 799.

REPEAL OF STATUTE: Whenever it becomes apparent that a later substitute is revisory of the entire matter of an earlier one and is declared as a substitute for it, the latter statute will prevail, and the earlier statute will be held to have been superseded, even though there be found no inconsistencies or repugnancies between the two.—*Mack v. Jastro et al.* (Cal.), 58 Pac. 373.

If the words of a statute be of doubtful meaning, if they be inartistically arranged, if the syntax be violative of the rules of composition, if ellipsis, tautology or redundancy occur, the statute must be looked at in other lights than those afforded by the mere words employed, namely the evident purpose and intent of the legislature, and the entire context of the statute.—*Landrum v. Flannigan* (Kan.), 56 Pac. 753.

When a legislature borrows a statute from another state, the legislature will ordinarily be presumed to have adopted the statute with the interpretations theretofore given it by the courts of that state.—*Stadler v. First National Bank* (Mont.), 56 Pac. 111.

In construing statutes in part unconstitutional, the rule is that whenever, after striking out unconstitutional portions, that which remains is so ambiguous in its meaning that the legislative intent cannot be with reasonable certainty ascertained, the whole act must fall.—*Cronly v. City of Tuscon* (Ariz.), 56 Pac. 877.

In construing a statute, the courts will follow the decision of the highest courts, particularly in the construction of the statutes of its own state, and not the dissenting opinions of the lower courts.—*Osbourne v. Home Life Ins. Co.* (Cal.), 56 Pac. 617.

The construction put upon statutes by the courts of the state from which they are borrowed is entitled to respectful consideration, and only strong reasons will warrant a departure from it; but we do not admit that such construction of borrowed statutes should prevail when not in harmony with the spirit and policy or our own legislation and decisions.—*Oleson v. Wilson* (Mont.), 52 Pac. 372.

Where the provisions of a statute are not in harmony with the subdivisional heads of the act, and the legislative intention is evident from the provisions, the subdivisional heads will be disregarded.—*State v. Bridges* (Utah), 53 Pac. 545.

Contemporary construction of a constitutional provision by the legislative department of the state is entitled to

weight with the courts in case of doubt or ambiguity.—*Frost v. Pfeiffer* (Colo.), 58 Pac. 147.

The rule in construing statutes that where it is manifest on the face of the act that an error has been made in the use of words, the court may correct it, and read the statute as corrected to give it the obvious intent of the legislature, does not justify the court in reading such a change into a statute as that the effect will be to abrogate a specific provision made therein.—*Hilborn v. St. Paul M. & M. Ry. Co.* (Mont.), 58 Pac. 811.

It is not necessary that the law should operate on all the counties and cities of a territory to be constitutional. If the law is general and uniform throughout the territory, operating on all the certain or necessary or reasonable class, or upon all who are brought within the relations or circumstances provided in the act, and such law has provision for future as well as present operation, it is not obnoxious to the limitations against special and local legislation.—*Codlin v. Kohlhausen* (N. M.), 53 Pac. 499.

Section 78. When Joint Resolutions Take Effect:

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

1887 R. S. Sec. 156; Laws, 1868, 5th Ses. p. 162; 1864, 1st Ses. p. 515.

Section 79. Effect of Amendment:

Where a section or part of a statute is amended, it is not to be considered as having been repealed and re-enacted in the amended form; but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

1887 R. S. Sec. 157.

Amendments, how made: See Const. Art. III, Sec. 18.

AMENDMENTS: It was the intention of the framers of the constitution to require amendments that might be adopted to pending bills to be read three times on several days, the same as original bills, or sections of the pending bill which was amended. A bill which passes one house, and is materially changed by amendment of the other house, and then sent back to the house where first originated, must go through the same procedure as to reading and final vote as if it was an original bill.—*Cohn v. Kingsley* (Idaho), 49 Pac. 985-988.

EFFECT OF AMENDMENTS: The act of the legislature entitled "An Act to establish and maintain a system of free schools," (see Ses. Laws 1891, p. 131), did not repeal Chapter 11, Title 3, of the Political Code, 1887 R. S. Secs.

729-736, so far as it re-enacted the provisions of said chapter, but merely continued the re-enacted provisions in force.—*Barton v. Moscow Independent School District*, 2 Idaho, 998, 29 Pac. 43.

Where an act is amended, the sections of the amended act, which are copied verbatim from the original act take effect from the date of the original act.—*People v. State Board of Equalization*, 20 Colo. 220, 37 Pac. 964.

The portions of an amended section which are merely copied without change are not to be considered as repealed and re-enacted, but to have been the law all along, and the new parts, or the changed portions are not to be taken to have been the law at any time prior to the passage of the amended act.—*Ely v. Holton*, 15 N. Y. 598; *C. P. R. R. Co. v. Shackelford*, 63 Cal. 261-265; *Swamp Land Dist. No. 307 v. Glide*, 112 Cal. 85, 44 Pac. 451.

Section 80. No Act Revived by Repeal of Repealing Act:

No act or part of an act, repealed by another act of the legislature, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

1887 R. S. Sec. 158; Compiled Laws 1875, p. 858.

REPEAL OF REPEALING ACT: The repeal of an act repealing a former act does not revive the former act, or give it any force and effect. This

result can be accomplished only by the re-enactment of the former act.—*People v. Hunt*, 41 Cal. 435; *Sullivan v. People*, 15 Ill. 233; *Tallaman & Des-sommes v. Cardenas*, 14 La. Ann. 514.

The repeal of a repealing law does

not revive the first law, unless the intention to revive be expressed by the legislature.—*Witkouski v. Witkouski*, 16 La. Ann. 232; to the same effect, see *Milne v. Huber*, 3 McLean, 212.

Where an act or part of an act is repealed, it is not revived by a subsequent repeal of the repealing act.—*Smith v. Hoyt*, 14 Wis. 252.

Section 81. Repeal of Criminal Statutes, Effect of:

The repeal of any law creating a criminal offense does not constitute a bar to the indictment and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment and punishment is expressly declared in the repealing act.

1887 R. S. Sec. 159; Compiled Laws 1875, p. 858.

OBJECT OF SECTION: The provision of this section is intended as and is a general saving clause to penal statutes, amendatory and otherwise, and continues in force a statute as it existed as to all offenses committed prior to repeal; and a person convicted of an offense, and sentenced to death, prior to repeal, must be punished under the law as it existed at the time of the commission of the offense.—*In re Davis* (Idaho), 59 Pac. 544.

Under this section the repeal of an act defining a crime and its punishment does not prevent the prosecution and conviction of a party for the prior violation thereof. This section is a salutary provision, and if it, or something like it, had always been incorporated in the statutes of the states and the United States, it would have prevented many a lame and impotent conclusion in criminal cases in which the defendant escaped punishment, because the legislature in the hurry and confusion of amending and enacting statutes had forgotten to insert a clause to save offenses and liabilities already committed or incurred from the effect of express or implied repeals.

—*United States v. Barr*, 4 Saw. 254.

When any criminal or penal statute shall be repealed, all offenses committed or forfeitures accrued under it while it was in force, shall be punished or enforced, as if it were in force, notwithstanding such repeal, unless otherwise expressly provided in the repealing statute.—*Volmer v. The State*, 34 Ark. 487; *McCuen v. The State*, 19 Ark. 634; to the same effect are *Acree & Kinman v. Commonwealth*, 13 Bush, 353; *State v. Shaffer*, 21 Iowa, 486; *State v. Ross*, 49 Mo. 416; *Commonwealth v. Adcock*, 8 Gratt. 661; *Jordan v. State*, 38 Ga. 585.

REPEAL OF CRIMINAL STATUTES, EFFECT OF: After the repeal of a statute which prescribed that a person violating it should be prosecuted by indictment, a person cannot be prosecuted by information for an offense committed before the repeal.—*People v. Tisdale*, 57 Cal. 104; *Ex parte Kohler*, 74 Cal. 44, 15 Pac. 436; *People v. Quinn*, 18 Cal. 122; *Griffin v. The State*, 39 Ala. 541; *Carlisle v. The State*, 42 Ala. 523; *State v. O'Conner*, 13 La. Ann. 486; *Mullinix v. The State*, 43 Ind. 511; *Whitehurst v. The State*, 43 Ind. 473.

MANNER OF PROPOSING AMENDMENTS TO THE CONSTITUTION.

Section 82. Action of Legislature: Amendments to the constitution may be proposed by joint resolution in either house of the legislature of this state, and if the same shall be voted for by two-thirds of all the members of each of the two houses, voting separately, in the manner provided by section one (1), of article twenty (20), of the constitution, the amendment or amendments proposed shall be submitted to the electors of this state for adoption or rejection in the manner provided by the election laws of the state.

1899, 5th Ses. p. 162, Sec. 1; 1891, 1st Ses. p. 229, Sec. 1.

Amendments to Constitution: Const. Art. XX.

COMPLIANCE WITH CONSTITUTION: A substantial compliance with the provisions of the constitution, in the matter of proposing amendments

and submitting them to the people for ratification, is sufficient. The power of the legislature to propose amendments is not governed by the provisions of Section 16, Article 3, of the constitution. It is not essential that the subject of a proposed amendment be expressed in the title, amendments may

be proposed by the legislature by joint resolution, and it is sufficient if such joint resolution clearly designates the section and article of the constitution to be amended.—Hays v. Hays (Idaho), 47 Pac. 732.

The failure to enter in full on the legislative journals the proposed amendment to the constitution was a disobedience to the constitution itself (Idaho Const. Art. XX, Sec. 1), and the proposed amendment never was proposed as required, and therefore never ought to have been submitted. It was a nullity before it reached the people.—Durfee v. Harper (Mont.), 56 Pac.

582; Thompson Inv. Co. v. Durfee (Mont.), 56 Pac. 582.

See State v. McBride, 4 Mo. 303; State v. Mason, 43 La. Ann. 590, 9 South. 776; Collier v. Frieson, 24 Ala. 100; Answer of the Judges, 6 Cush. 573; Paving Co. v. Hilton, 69 Cal. 479, 11 Pac. 3; Koehler v. Hill, 60 Iowa, 543, 14 N. W. 738, and 15 N. W. 609; Russie v. Brazzell, 128 Mo. 93, 30 S. W. 526; Miller v. Johnson, 92 Ky. 589, 18 S. W. 522; Cooley Const. Lim. p. 44; James. Const. Conv. Sec. 564 seq.; State v. Tuffy, 19 Nev. 391, 12 Pac. 835; Oakland Paving Co. v. Tompkins, 72 Cal. 5, over-ruling 69 Cal. 479, supra.

Section 83. Amendments to be Enrolled and Numbered: Whenever any amendments to the constitution shall have been proposed to and adopted by the electors of this state, the same shall be enrolled and numbered in the order of time in which they may be adopted, and preserved by the secretary of state among the public records of his office.

1899, 5th Ses. p. 162, Sec. 2; 1891, 1st Ses. p. 229, Sec. 2.

WHEN AMENDMENT IS ADOPTED: When an amendment to the constitution is submitted to the voters, and a majority of the electors voting upon that question vote in favor of the amendment, the same is ratified, although the votes thus cast are not a majority of the votes cast at such general election for state officers.—Green v. State Board of Canvassers (Idaho), 47 Pac. 259.

AMENDMENTS NOT SELF EXECUTING: An amendment to the constitution, separating two offices theretofore combined, which provides that "the legislature by general and uniform laws" shall provide for the "election biennially" of such officers, is not self-

executing, and does not go into full operation until such laws have been enacted, and a general biennial election held thereunder.—Blake v. Board of County Commissioners of Ada County (Idaho), 47 Pac. 734.

TIME WHEN AN AMENDMENT BECOMES OPERATIVE: In determining the time at which a constitutional amendment becomes fully operative, the intention of the people adopting it should be ascertained. This should be done from the context of the amendment and in case of doubt, the court should also consider the existing conditions, and the results which would follow if the amendment was held to have become immediately operative.—Hays v. Hays (Idaho), 47 Pac. 732.

CHAPTER V. EXECUTIVE DEPARTMENT.

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GENERAL PROVISIONS.

Section 84. Officers of Executive Department: The executive department shall consist of a governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general and superintendent of public instruction.

1887 R. S. Sec. 170; rewritten by Commission to conform to constitutional provision, Art. IV, Sec. 1.

Mode of election: Const. Art. IV, Sec. 2; also Title IV, this Code.

In case of tie vote legislature to decide: Const. Art. IV, Sec. 2.

Qualifications: Const. Art. IV, Sec. 3; also post Sec. 268.

All executive officers, except the lieutenant governor, shall, during their terms of office, reside at the seat of government, where they shall keep the public books and records.—Const. Art. IV, Sec. 1; see also Sec. 269.

Office hours: Sec. 336.

Oath of office: Sec. 279 et seq.

POWERS AND DUTIES: No officer or person charged with the exercise of powers properly belonging to the

executive branch of the state government, shall exercise any powers properly belonging to either of the other co-ordinate branches of the state government, except as expressly directed or permitted in the constitution.—Const. Art. II.

In assigning to these officers their duties, the legislature possesses a wide discretion and the courts will not interfere unless the duties assigned are in their nature wholly foreign to the office.—*Love v. Baehr*, 47 Cal. 364.

Accounts should be kept by the officers of the executive department of all the moneys received by them severally from all sources, and the moneys disbursed by them, and report the same to the governor under oath semi-annually.—Const. Art. IV, Sec. 17.

Section 85. Term of Office: The regular term of office of each of the above-named officers shall commence on the first Monday of January next after his election, and shall continue for a term of two years and until his successor is elected and qualified.

New Sec. by Commission, taken from Laws of 1899, p. 34, Sec. 8; p. 67, Sec. 1, and p. 69, Sec. 5; also Const. Art. IV, Sec. 1.

TERM OF OFFICE: The right of an officer to hold office until his successor is elected and qualified is as much a part of his estate in the office as the original term for which he was elected.—*People ex rel. Glidden v. Green*, 1 Idaho, 235.

SALARY WHEN HOLDING OVER:

An officer holding over and continuing to discharge his official duties, until his successor is qualified, was held to be entitled to compensation for the time without any express provision to that effect.—*Robb v. Carter*, 65 Md. 321, 4 Atl. 282.

Right of an officer to a salary is not affected by diminution or cessation of

the office, the office itself remaining.— *Marquis v. City of Santa Ana*, 103 Cal. 661, 37 Pac. 650.

Section 86. To Occupy Offices in Capitol Building:

The executive officers enumerated above may occupy, without rent or charge, the offices provided for them, respectively, in the capitol building, and no pay or allowance must be made to any one of said officers for rent, fuel, or lights, whether such officer occupy such office or not.

1887 R. S. Sec. 327.

THE GOVERNOR.

Section 87. Powers and Duties: In addition to those prescribed by the constitution, the governor has the power and may perform the duties prescribed in this and the following sections:

First.—To supervise the official conduct of all executive and ministerial officers.

Second.—To see that all offices are filled, and the duties thereof performed, or, in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session.

Third.—To make the appointments and supply the vacancies provided by law.

Fourth.—He is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States.

Fifth.—Whenever any suit or legal proceeding is pending in this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney-general to appear on behalf of the state.

Sixth.—He may require the attorney-general or prosecuting attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

Seventh.—He may require the attorney-general to aid any prosecuting attorney in the discharge of his duties.

Eighth.—He may offer rewards not exceeding one thousand dollars each, payable out of the state treasury, for the apprehension of any convict who has escaped from the state prison, or of any person who has committed or is charged with the commission of an offense punishable with death; and also offer like rewards, not exceeding five hundred dollars each, in cases of felony where the offense is not punishable with death.

Ninth.—To perform such duties respecting fugitives from justice as are prescribed by the Penal Code.

Tenth.—To issue and transmit election proclamations as prescribed by law.

Eleventh.—He may require any officer to make special reports to him in writing on demand.

Twelfth.—He has such other powers and may perform such other duties as are devolved upon him by any law of this state.

1887 R. S. Sec. 180; amended Laws 1899, 5th Ses. p. 135; 1891, 1st Ses. p. 198.

The supreme executive power of the state is vested in the governor, and upon him devolves the important duty to see that the laws are faithfully executed.—Const. Art. IV, Sec. 5.

The governor may require information in writing from all the various officers of the executive department, and from all officers and managers of state institutions relative to the duties of their respective offices, or the management and expenses of the various offices and institutions, and may when he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution.—Const. Art. IV, Sec. 8.

RESPECTING LEGISLATURE: Veto power: Const. Art. IV, Secs. 10 and 11.

May convene legislature in extraordinary session: Const. Art. IV, Sec. 9.

The question of the existence of an extraordinary occasion of sufficient gravity to justify a call for an extra session of the legislature is to be determined by the governor alone in the exercise of his discretion as a sworn officer, and this discretion is not subject to challenge or review by the courts.—Farrelly v. Cole, 60 Kan. Sup. 356, 44 L. R. A. 464, 56 Pac. 492.

AS COMMANDER IN CHIEF: The governor is commander in chief of the military forces of the state, and may call out the militia to execute the laws, to suppress insurrection, or to repel invasion.—Const. Art. IV, Sec. 4.

Duties respecting militia: Chap. XIV; also Sec. 274.

May apply for and cause to be brought into the state armed troops, when: Const. Art. XIV, Sec. 6.

The proclamation of the governor declaring Shoshone county to be in a state of rebellion, and his action in calling to his aid the military forces of the United States for the purpose of restoring good order and the supremacy of the law, had the effect to put into force, to a limited extent, martial law in said county, and such action is not in violation of the constitution, but in harmony with it, being necessary for the preservation of the government and

in its necessary self defense.—In re Boyle (Idaho), 57 Pac. 706.

POWER TO MAKE APPOINTMENTS AND TO FILL VACANCIES: Const. Art. IV, Sec. 6; also Chap. XXIX.

The power to appoint to office or fill vacancies is not inherently an executive function, and belongs to the governor only when conferred by law.—People ex rel. Richardson v. Henderson, 4 Wyo. 535, 22 L. R. A. 751, 35 Pac. 517; Fox v. McDonald, 101 Ala. 51, 21 L. R. A. 529, 13 So. 416; State ex rel. Standish v. Boucher, 3 N. Dak. 389, 21 L. R. A. 539, 56 N. W. 142.

POWER OF REMOVAL: In the absence of constitutional or legislative prohibition, the power of removing an officer is incident to the power of appointing him.—Newsome v. Cooke, 44 Miss. 352.

To the same effect is People v. Freese, 76 Cal. 633, 18 Pac. 812, where it was decided that an officer could be removed only by the power which appointed him; but in Debuc. v. Voos, 19 La. Ann. 210, 92 Am. Dec. 526, it is held that the power to remove being incident to the power to appoint, does not apply to governors of states, as their power to remove is usually limited to particular cases provided for by statutory enactment.

In Biggs v. McBride, 17 Or. 640, 21 Pac. 878, it was determined that whoever had the power to remove for cause, must give notice to the delinquent of the particular charges against him and an opportunity to defend himself; to the contrary, however, is Kunan v. Perry, 24 Tex. 253.

As to the power of the legislature to provide summary method of removal, see Rankin v. Jauman (Idaho), 36 Pac. 502.

The power to remove for certain cause, implies authority to judge of the existence of that cause.—State v. Doherty, 25 La. Ann. 119, 13 Am. Rep. 131; People v. Mayor, 82 N. Y. 491.

May grant respites and reprieves: Const. Art. IV, Sec. 7.

May restore citizenship: Sec. 363.

To issue election proclamation: Sec. 782.

Must approve bonds of state officers: Sec. 285.

See duties as member of state boards: Chap. XI.

Section 88. To Transmit List of Appointments to Legislature: Within ten days after the meeting of the legislature the governor must transmit to it a list of all the appointments made by him and not before communicated.

1887 R. S. Sec. 181.

Section 89. Records to be Kept: The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2. A register of statements in capital cases made to him, with his action thereon.

3. An account of all his disbursements of state moneys, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

4. A register of all appointments made by him, with date of commission, names of appointee and predecessor.

5. A record of all persons confined in the state prison, showing the name of the convict, his age and general appearance, when and where convicted, and of what crime, the time of his sentence, and when such time expires.

1887 R. S. Sec. 182.

Section 90. Every Provision is Applicable to Person Acting as Governor: Every provision in the laws of this state in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by others toward him, extends to the person performing for the time being the duties of the governor.

1887 R. S. Sec. 183.

The official who shall perform the duties of governor in case of the dis-

qualification of both the governor and lieutenant governor, is fixed by the constitution.—Art. IV, Sec. 14.

Section 91. Governor may Examine Treasury: The governor of the state is hereby authorized and directed, at any time whenever he considers it necessary for the safe keeping and disbursement of public moneys, to make an examination of the amount in the possession of the state treasurer, and for that purpose must have access to the same.

1887 R. S. Sec. 242; Compiled Laws 1875, p. 851, Sec. 14.

Section 92. Salary: The governor, during his continuance in office, shall receive as compensation in full for all services rendered by him in any official capacity or employment whatever during his term of office as such governor, three thousand dollars per annum.

By new Commission following Const. Art. IV, Sec. 19.

When payable: Sec. 335.

LIEUTENANT GOVERNOR.

Section 93. Powers and Duties: The lieutenant governor shall be president of the senate and has such powers and shall perform such duties as said president as are prescribed in Title II, Chapter IV of this Code.

New Sec. by Commission; there being no lieutenant governor under the territorial form of government, and the state legislatures having taken no action, there exists no statute what-

ever concerning his powers or duties, this and the next section are inserted by the Commission. They are in strict conformity to Art. IV, Secs. 12 and 13 of the constitution.

Section 94. Acting as Governor: The powers, duties and emoluments of the office of governor shall devolve upon the lieutenant governor in cases provided for in article IV section 12 of the state constitution.

New Sec. by Commision; see note preceding Sec.

Section 95. Salary: The lieutenant governor shall receive such salary as is provided in article IV section 19 of the state constitution.

New Sec. by Commission.

Salary of speaker: Const. Art. III, Sec. 23.

THE SECRETARY OF STATE.

Section 96. Charged with Custody of Records: The secretary of state is charged with the custody:

1. Of all acts and resolutions passed by the legislature.
2. Of the journals of the legislature.
3. Of the Great Seal.
4. Of all books, records, deeds, parchments, maps, and papers, kept or deposited in his office pursuant to law.

1887 R. S. Sec. 190.

Great seal: Sec. 333.

MANDAMUS, WHEN DOES NOT LIE: Section 43 of this Code provides that the secretary of the state must certify to the reception of all bills and papers belonging to both houses of the legislature delivered to him by the respective clerks. Held that mandamus would not lie, on the application of the president of the council of a ses-

sion of the legislature, to compel the secretary of the territory to record a report of such president as part of the proceedings of the session, or to expunge from the records of such proceedings part of a former report made by the clerk. *Berry, J., dissenting.—Clough v. Curtis*, 2 Idaho, 487, 22 Pac. 8; see also *Burkhart v. Reed*, 2 Idaho, 470; 22 Pac. 1.

Section 97. Duties: It is the duty of the secretary of state:

1. To keep a register of and attest the official acts of the governor.
2. To affix the Great Seal, with his attestation, to commissions, pardons and other public instruments to which the official signature of the governor is required.
3. To record in proper books all conveyances made to the state, and all articles of incorporation filed in his office.
4. To receive and record in proper books the official bonds of all the officers whose bonds are required to be filed with him.
5. To take and file in his office receipts for all books distributed by him.
6. To furnish on demand to any person paying the fees therefor a certified copy of all, or any part of any law, record, or other instrument filed, deposited, or recorded in his office.
7. To present to the legislature, at the commencement of each session thereof, a full account of all purchases made and expenses incurred by him on account of the state.

1887 R. S. Sec. 191; Sub. 6 stricken out as governor does not commission.

Duties respecting contested elections before legislature: Sec. 54.

To furnish list of members of legislature: Sec. 33.

DUTY RESPECTING JOURNALS:

Where an appropriation is made by the legislature for publishing the journals of the house and senate and the session laws, such act is intended only to provide compensation for the printing

and binding thereof. It is part of the official duty of the secretary of state to prepare the copies of the laws and journals for the printer.—*State ex rel. Anderson v. Lewis* (Idaho), 52 Pac. 163.

Duty respecting weights and measures: Sec. 601 et seq. Labels and trade marks, Secs. 635-636.

DUTY RESPECTING ELECTIONS:
Chap. XXII.

Writ of mandate is the proper proceeding to compel the secretary of state

to file and certify a ticket entitled to filing and certification by such officer. A writ of prohibition, under Sections 3782 and 3783 of the Code of Civil Procedure, will lie to restrain the action of a ministerial officer, when it appears that such action is illegal and beyond his jurisdiction.—*Williams v. Lewis, Secretary of State* (Idaho), 54 Pac. 619.

Duties respecting surety companies: Civil Code, Chap. XCI.

See duties as member of state boards: Chap. XI.

Section 98. Distribution of Statutes and Journals:

Immediately after the laws, resolutions and journals are bound, the secretary of state must distribute the same as follows:

1. To each department of the government at Washington and of the government of this state, one copy.
2. To the library of congress and the state library, two copies each.
3. To each of the states and territories one copy.
4. To our member in congress, and to each of the judges of the supreme court of this state, one copy.
5. To each member of the legislature, at the session when such laws and journals were adopted, one copy.
6. Of the laws alone, to the auditor of each county, in the cheapest and most expeditious manner, to be by the sheriff distributed under the direction of the auditor, one copy for the board of commissioners, one copy to each county officer and each justice of the peace.

1887 R. S. Sec. 192,

Section 99. Distribution of Supreme Court Reports:

He must distribute bound volumes of the decisions of the supreme court as soon as he receives them, as follows:

To the librarian of congress, two copies; to the Idaho state library, five copies; to the University of Idaho, to the Albion Normal School and to the State Normal School at Lewiston, each one copy; to the library at the state penitentiary, one copy; to each county prosecuting attorney, one copy; to each probate judge, one copy; to each clerk of the district court, one copy; to each district judge, one copy; to each justice of the supreme court, one copy; to the clerk of the supreme court, two copies, to be kept in the court room during the sessions of court for the use of the bar; to each state and territory in the United States, one copy for the use of the state library thereof; to each foreign state or country sending to this state copies of its printed court reports, one copy; to the governor, secretary of state, state treasurer, state auditor, attorney general, superintendent of public instruction, state engineer and state mine inspector, each one copy: *Provided*, That each public officer receiving a copy of any volume, or volumes of said report, under the provisions of this section, shall take good care of same, and shall, upon retiring from office, turn the same

over to his successor in office: *Provided, further,* That copies of any volume of such reports may be again issued to any of said officers, institutions, states or territories upon good and sufficient proof of the loss of the copy sought to be replaced, presented to the justices of the supreme court, who may by writing, signed by a majority of the justices, direct the secretary of state to furnish another copy of the volume so lost, in place thereof, but no direction to furnish another copy shall be made in any case without good and sufficient evidence, showing that the officer, institution, state or territory sustaining such loss, sustained the same without fault or negligence.

1901, 6th Ses. p. 10, Sec. 5.

Section 100. Books Distributed to be Marked: The secretary must indelibly mark each book distributed to officers in this state (except legislative officers and the reporter) with the name of the county to which, and the official designation of the officer to whom it is sent. Such books remain the property of the state, and must be, by the officers receiving them, delivered to their successors.

1887 R. S. Sec. 194.

Section 101. Expenses of Distribution, How Paid: The expenses incurred by him, in carrying into effect the provisions of the three preceding sections, must be audited by the board of examiners and paid out of any moneys specially appropriated for that purpose.

1887 R. S. Sec. 195.

Board of examiners: Sec. 342 et seq.

Section 102. Fees: The secretary of state, for services performed in his office, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in his office, twenty cents per folio.
 2. For fixing certificate and seal of the state, one dollar.
 3. For filing articles of incorporations:
 - (a) When the authorized capital stock does not exceed \$25,000.00, \$5.00.
 - (b) When the authorized capital stock exceeds \$25,000.00 and does not exceed \$100,000.00, \$10.00.
 - (c) When the authorized capital stock exceeds \$100,000.00 and does not exceed \$500,000.00, \$20.00.
 - (d) When the authorized capital stock exceeds \$500,000.00, \$25.00.
 4. For recording articles of incorporation, twenty cents per folio.
 5. For issuing each certificate of incorporation, \$3.00.
 6. For receiving and recording each official bond, twenty cents per folio.
 7. For each commission, or other document signed by the governor and attested by the secretary (pardons excepted) five dollars.
 8. For searching records and archives of the state, one dollar.
- But no member of the legislature or state officer can be charged for any such search relative to matter appertaining to the duties of their

offices; nor shall they be charged any fee for a certified copy of any law or resolution passed by the legislature relative to their official duties.

1901, 6th Ses. p. 141.

Duty to furnish certified copies of documents: Sec. 79.

DISPOSITION OF FEES: Where the secretary of state has received fees for making copies of the session laws and journals for the printer, such fees

are required to be paid into the state treasury by the secretary of state, under the provisions of Section 19 of Article 4 of the constitution.—State ex rel. Anderson v. Lewis, Secretary of State (Idaho), 52 Pac. 163; State ex rel. Attorney General v. Liedtke, 12 Neb. 171, 10 N. W. Rep. 703.

Section 103. Salary: The secretary of state, during his continuance in office, shall receive as compensation in full for all services rendered by him in any official capacity or employment whatever during his term of office as such secretary of state, one thousand eight hundred dollars per annum.

By new Commission following Const. Art. IV, Sec. 19.

When payable: Sec. 335.

Section 104. Official Bond: The secretary of state must execute an official bond to the state, in the sum of two thousand dollars, and must receive no fees under the laws of the state until such bond, approved by the governor, is filed with the auditor.

1887 R. S. Sec. 197.

Oath of office: Sec. 279 et seq.

Official bonds: Chap. X, Secs. 234, 317.

STATE AUDITOR.

Section 105. Duties: It is the duty of the state auditor:

1. To superintend the fiscal concerns of the state.
2. To report to the governor at least twenty days preceding each regular session of the legislature, a statement of the funds of the state, its revenues, and of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriations and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed.
3. To accompany his biennial report with tabular statements, showing:
 1. The amount of each appropriation for the two preceding fiscal years, the amounts expended, and the balance, if any.
 2. The amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid, or due therefrom.
4. When requested, to give information in writing to either house of the legislature relating to the fiscal affairs of the state or the duties of his office.
5. To suggest plans for the improvement and management of the public revenues.
6. To keep and state all accounts in which the state is interested.
7. To keep an account of all warrants drawn upon the treasurer,

and a separate account under the head of each specified appropriation, showing at all times the unexpended balance of such appropriation.

8. To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him.

9. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered.

10. To examine and settle the accounts of all persons indebted to the state, and to certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor to give such person a discharge and charge the treasurer therewith.

11. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

12. To require all persons who have received any moneys belonging to the state and have not accounted therefor to settle their accounts.

13. In his discretion to inspect the books of any person charged with the receipt, safe keeping, or disbursement of public moneys.

14. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render such statement at such times and in such form as he may require.

15. To direct and superintend the collection of all moneys due the state, and institute suits in its name for all official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the state, of which suits the courts of Ada county have jurisdiction, without regard to the residence of the defendants.

16. To draw warrants on the treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, and when the liability accrued.

17. To furnish the state treasurer with a list of warrants drawn upon the treasury.

18. To have printed and forwarded to the treasurer of each county blank state licenses.

19. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office.

1887 R. S. Sec. 205; Compiled Laws 1875, p. 798; 1865, 3d Ses. p. 191.

WARRANTS: Under the provisions of Section 13, Article VII, of the con-

stitution, which provided that no money shall be drawn from the treasury, but in pursuance of appropriations made by law, in the absence of

an appropriation, the state auditor properly refused to issue a state warrant in payment for legal services of counsel employed by the state auditor under the provisions of Section 1529 of this Code; and said section does not make an appropriation for the payment of such services.—*Kingsbury v. Anderson, State Auditor (Idaho), 51 Pac. 744.*

Where contract for the construction of a section of the state wagon road stipulates that final payment will be made when the contract is executed to the satisfaction of the state wagon road commissioners and the board of examiners, the state auditor cannot be required to issue warrant until the road is examined by said board of examiners and their report made; and until such bill for final payment has been submitted to the state board of

examiners.—*Winters v. Ramsey, State Auditor (Idaho), 39 Pac. 193; State v. Hallock (Nev.), 22 Pac. 123.*

Mandamus will issue to compel the state auditor to issue a warrant for the payment of an officer's salary provided by law.—*Gilbert v. Moody, State Auditor, 2 Idaho, 751, 25 Pac. 1092.*

A writ of mandate will not issue to compel the state auditor to draw his warrant upon a fund that has never been established by law.—*Curtis v. Moody, 2 Idaho, 860, 27 Pac. 732.*

Duty respecting state lands: Sec. 466.

Duty respecting revenue: Chap. LIX;.

Duty respecting insurance companies: Civil Code, Chap. LXXXVI.

See duties as member of state boards: Chap. XI.

Section 106. Certificate of Settlement of Debtor:

The certificate mentioned in sub-division 10 of section 105 must show by whom the payment is to be made, the amount thereof, and the funds into which it is to be paid, and must be numbered in order, beginning with number one at the commencement of each fiscal year.

1887 R. S. Sec. 206.

Fiscal year: Const. Art. VII, Sec. 1.

If the auditor directs the treasurer to place money in a fund contrary to law, the treasurer should decline to do so, and when the purpose for which

a special fund was created has ceased to exist, the auditor should not direct money to be placed in that fund.—*Steunenberg v. Storer (Idaho), 52 Pac. 14.*

Section 107. Account of School Fund: The auditor must keep a separate account of the school fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes.

1887 R. S. Sec. 207.

School fund: Chap. XXXVII.

Section 108. Warrants Drawn in Order of Allowance: All warrants for claims which have been audited and filed in his office must be drawn in the order of their allowance.

1887 R. S. Sec. 208.

Section 109. Proceedings against Defaulters: Whenever any person has received moneys, or has money or other personal property which belongs to the state, or has been entrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to, or held in trust, by the state, and fails to render an account thereof to, and make settlement with the auditor within the time prescribed by law, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the state treasury any moneys belonging to the state upon being required so to do by the auditor, within twenty days after such requisition, the auditor must state an account with such person, charging twenty-five per cent. damages, and interest at the rate of ten per cent. per annum from

the time of failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated. But in case the auditor cannot for want of information state an account, he may, in any action brought by him, aver that fact, and allege generally the amount of money or other property which is due to, or which belongs to the state.

1887 R. S. Sec. 209.

DAMAGES, WHEN NOT ENFORCED: The damages allowed by this section are intended as a penalty for a wilful dereliction, or refusal by the officer upon whom the demand is made; and where it appears the action of the defendant, an officer, was not at-

tributable to any desire on his part to avoid a duty, or to misinterpret a law to his own advantage, and moreover that he acted in the matter upon the advice of the attorney general, his proper legal adviser, the penalty will not be enforced.—*State ex rel. Anderson v. Lewis* (Idaho), 52 Pac. 163.

Section 110. Printing of Blanks: The state auditor must, on the first day of August in each year, advertise that he will receive sealed proposals for contracts, for the printing and delivery at the auditor's office in Boise City, of all blanks required by said office during the year next ensuing, and such notice must state the date for delivery of such blanks; a description and schedule must be made out, and kept by the auditor in his office for the inspection of any person desirous of making proposals for the printing of the same. Said notice must be published in two newspapers, published in the state, at least once a week, for at least four successive weeks, and must state the time that all proposals will be opened; the proposals must be publicly opened and the award made to the lowest bidder, at the office of the auditor by the state treasurer and auditor on the day and hour named in the notice, which must be within five days from the last publication; and the blanks must be delivered within sixty days after the award; but this section does not authorize the expenditure of more than one thousand dollars in any one year. The person to whom the contract is awarded must, within ten days thereafter, file with said auditor, a bond in the sum of two thousand dollars, with at least two good and sufficient sureties to be approved by the auditor, and conditioned for the faithful performance of his contract in accordance with the terms thereof. And if he fails or refuses to give such bond, the contract must be awarded to the next lowest bidder, or the auditor may advertise for other proposals as he may think best. All blanks of every description, required to be furnished by the auditor, under any of the laws of the state, must be printed under a contract in accordance with the provisions of this chapter, and not otherwise; and no warrant must be drawn by the auditor upon the state treasurer for any sum for printing, except as herein provided.

1887 R. S. Sec. 210; Laws 1877, 9th Ses. p. 40; Com. Laws 1875, p. 825; 1872, 7th Ses. p. 53; 1871, 6th Ses. p. 46.

Public printing to be done in the state: Sec. 631.

Section 111. Claims Against the State: All persons having claims against the state, must exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled

and allowed by the board of examiners, within two years after such claims shall accrue, and not afterwards; and in all suits brought in behalf of the state, no debt or claim must be allowed against the state as a set-off but such as have been exhibited to the auditor and allowed or disallowed by the board of examiners, except only in cases where it is proved to the satisfaction of the court, that the defendant at the time of the trial, is in the possession of vouchers which he could not produce to the board of examiners, or, that he was prevented from exhibiting the claim to the board of examiners by absence from the state, sickness or unavoidable accident. No claim not provided for by law shall be audited or set off.

1887 R. S. Sec. 211; Compiled Laws relating to state board of examiners, 1875, p. 800, rewritten by Commission Art. IV, Sec. 18. to conform to constitutional provision

Section 112. Vouchers and Accounts Preserved: All accounts, vouchers, and documents settled, or to be settled, by the auditor or board of examiners must be preserved in the auditor's office, and copies thereof, authenticated by the official seal of the auditor shall be given to any person interested therein who requires the same.

1887 R. S. Sec. 213; Compiled Laws 1875, p. 800; 1866, 3d Ses. p. 193, Sec. 3.

Section 113. Only Claims Provided for by Law Must be Paid: In all cases of specific appropriations, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the state, when audited, the auditor must draw warrants upon the treasury for the amount; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrants must be drawn by the auditor, or paid by the treasurer until appropriation is made by law for that purpose, nor must the whole amount drawn and paid for any purpose or under any one appropriation ever exceed the amount appropriated.

1887 R. S. Sec. 214; Compiled Laws purpose, or under any appropriation for any sum exceeding the amount appropriated.—Kingsbury v. Anderson, State Auditor (Idaho), 51 Pac. 744.

Under the provisions of this section, the auditor is prohibited from drawing warrants on the treasury for any

Section 114. Delinquent Collectors Reported to Legislature: The auditor must report to the legislature, within ten days after the commencement of each regular session, a list of all the collectors of revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled according to law, and the reasons therefor.

1887 R. S. Sec. 217; Compiled Laws 1875, p. 801; 1866, 3d Ses. p. 193, Sec. 13.

Section 115. Books and Papers Open to Legislature: All the books, papers, letters, and transactions pertaining to the office of the auditor, are open to the inspection of a committee of the legislature, or either branch thereof, who shall examine all the auditor's accounts.

1887 R. S. Sec. 219; Compiled Laws 1875, p. 801; 1866, 3d Ses. p. 193, Sec. 15.

Section 116. Seal; Certified Copies of Records as Evidence: The auditor must keep a seal of office, for the authentication of all papers, writings, and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original.

1887 R. S. Sec. 220; Compiled Laws Seals: Sec. 332.
1875, p. 801; 1866, 3d Ses. p. 194, Sec. 17.

Section 117. Salary: The auditor, during his continuance in office, shall receive as compensation in full for all services rendered by him in any official capacity or employment whatever during his term of office as such auditor, one thousand eight hundred dollars. The salary of the auditor must be audited by the state treasurer, and paid by him as provided by law, out of any money in the treasury appropriated therefor.

1887 R. S. Sec. 221 and portion of Sec. conform to Const. Art. IV, Sec. 19.
218, rewritten by new Commission to When payable: Sec. 335.

Section 118. Official Bond: The auditor must execute an official bond in the sum of ten thousand dollars.

1887 R. S. Sec. 222; Compiled Laws Official bonds: Chap. X.
1875, p. 797; 1866, 3d Ses. p. 190.

STATE TREASURER.

Section 119. Duties: It is the duty of the treasurer:

1. To receive and keep all moneys belonging to the state not required to be received and kept by some other person.
2. To file and keep the certificates of the auditor delivered to him when moneys are paid into the treasury;
3. To deliver to each person paying money into the treasury a receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year;
4. To pay warrants drawn by the auditor out of the funds upon and in the order in which they are drawn;
5. Upon the payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid and file and preserve the same;
6. To keep an account of all moneys received and disbursed;
7. To keep separate accounts of the different funds;
8. To report to the auditor on the last day of each month, the amount disbursed for redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund;
9. At the request of either house of the legislature, or of any committee thereof, to give information in writing as to the condition of the treasury or upon any subject relating to the duties of his office;

10. To report to the governor at the time prescribed in this Code, the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the two preceding fiscal years;

11. To authenticate with his official seal all writings, and papers issued from his office;

12. To discharge such other duties as may be imposed upon him by law.

1887 R. S. Sec. 230; Compiled Laws 1875, p. 848 et seq.

Reports: Sec. 339.

PAYMENT, FUNDS: The state treasurer must pay the state indebtedness in such funds as he receives. He cannot legally pay in any other.—*Crutcher v. Sterling*, 1 Idaho, 306.

CAPITOL BUILDING FUNDS: Under the provisions of an act providing for the erection of a capitol building at Boise City, and the issuance of state bonds, creating a capitol building fund, out of which said bonds and in-

terest thereon were to be paid (see Special Laws, p. 14), is was not intended to create a permanent capitol building fund, and after said bonds and interest were fully paid, the revenue appropriated to said fund should have been placed by the state treasurer in the general fund of the state.—*Steunenberg v. Storer* (Idaho), 52 Pac. 14.

Duty respecting militia: Chap. XIV, Sec. 545.

Duty respecting insurance companies: Civil Code, Chap. LXXXVI.

See duties as member of state boards: Chap. XI.

Section 120. Receipt of Money: He must receive no money into the treasury unless accompanied by the certificate of the auditor.

1887 R. S. Sec. 231.

If the auditor directs the treasurer to place money in a fund, contrary to law, the treasurer should decline to do so, and when the purpose for which a

special fund was created has ceased to exist, the auditor should not direct money to be placed in that fund.—*Steunenberg v. Storer* (Idaho), 52 Pac. 14.

Section 121. General Fund, of what Consists: The general fund consists of moneys received into the treasury and not specially appropriated to any other fund.

1887 R. S. Sec. 232.

When a fund is created for a special purpose, and the purpose for which it was created has been fully accomplished, the money which supplied it

must go back to the fund from which it was diverted, unless otherwise provided by law.—*Steunenberg v. Storer* (Idaho), 52 Pac. 14.

Section 122. Payment of Warrants: The state treasurer must pay warrants on any of the several funds in his office in their regular order, as prescribed by law.

1887 R. S. Sec. 235; Compiled Laws 1875, p. 848; 1871, 6th Ses. p. 41.

Section 123. Partial Payment of Warrant: When any warrant is presented for payment, and there is not money on hand to pay the warrant in full, the treasurer must pay to the holder thereof such sums only as may be in the fund upon which the warrant is drawn, and divide the warrant, retaining that portion on which the number of the warrant is, and require the owner of the warrant to receipt for the amount received, on the back of said portion; the other part of the warrant must be returned to the owner thereof, with the following endorsement on the back: No. (in figures). number of warrant written, total amount of warrants to date, amount paid on warrant, balance due on warrant on the date of par-

tial payment. date of partial payment, name of treasurer. And said portion of warrant, so endorsed, constitutes a charge against the fund on which it was originally drawn, for the amount of the balance as shown by the endorsement, and is payable out of the first money in said fund; and the above provided division of any warrant in no way destroys its validity; but nothing in this chapter must be construed as allowing the payment of interest on interest.

1887 R. S. Sec. 236; Compiled Laws 1875, p. 849; 1871, 6th Ses. p. 41.

Section 124. Books and Papers Open to Inspection of Legislature: The books, papers, letters and transactions pertaining to the office of treasurer, are at all times during office hours, open to the inspection of a committee of the legislature, or either branch thereof, to examine and settle all accounts, or to take copies of the same, and to count all moneys; and when the successor of any such treasurer is appointed and qualified, the state auditor must examine and settle all the accounts of such treasurer, remaining unsettled, and give to him a certified statement, showing the balance of moneys, securities, and effects for which he is accountable, and which have been delivered to his successor, and report the same to the legislature.

1887 R. S. Sec. 237; Compiled Laws 1875, p. 849; 1864, 2d Ses. p. 416.

Section 125. Registration of Warrants not Paid: It is the duty of the state treasurer to keep a register of the state warrants presented to him and not paid for want of funds, in the order of their presentation and to write across the back of the same "presented and not paid for want of funds," said endorsement to be dated and signed by the treasurer, and said warrants draw interest at the rate of six per cent. per annum, from the date of presentation until paid

1899, 5th Ses. p. 228; 1893, 2d Ses. p. 238; Compiled Laws 1875, p. 850; 1864, 168, amending Laws 1887, R. S. Sec. 2d Ses. p. 417.

Section 126. Certified Copies of Records as Evidence: The treasurer must keep a seal of office for the authentication of all papers, writings and documents required by law to be certified by him; and copies, so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original documents.

1887 R. S. Sec. 239; Compiled Laws 1875, p. 850; 1864, 2d Ses. p. 417.

Section 127. Forfeiture for Refusal to Pay Warrants: If the state treasurer wilfully and unlawfully refuses to pay any warrant lawfully drawn upon the treasury, he forfeits and must pay fourfold the amount, to be recovered by action against the treasurer and his sureties on his official bond, or otherwise.

1887 R. S. Sec. 240; Compiled Laws 1875, p. 850; 1864, 2d Ses. p. 417.

Section 128. Salary: The treasurer, during his continuance in office, shall receive as compensation in full for all services rendered by him in any official capacity or employment whatever during

his term of office as such treasurer, one thousand dollars per annum, to be audited by the State Auditor, and retained by said treasurer.

1887 R. S. Sec. 241 changed by new IV, Sec. 19.
Commission to conform to Const. Art. When payable: Sec. 335.

Section 129. Official Bond: The treasurer must execute an official bond in the sum of sixty-five thousand (\$65,000.00) dollars.

1887 R. S. Sec. 234.

Section 130. May Appoint Deputy: The state treasurer may appoint a deputy state treasurer.

1899, 5th Ses. p. 220; 1893, 2d Ses. p. 150.

Section 131. Oath and Duties of Deputy: Such deputy shall take the oath required of his principal, and may perform all the official duties of such principal, being subject to the same regulations and penalties.

1899, 5th Ses. p. 220; 1893, 2d Ses. p. 150.

Section 132. Responsibility of Principal: Such principal shall be responsible for all the official acts of such deputy.

1899, 5th Ses. p. 220; 1893, 2d Ses. p. 150.

ATTORNEY GENERAL.

Section 133. Duties: It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state or some officer thereof acting in his official capacity. Also to prosecute and defend all the above mentioned causes in the United States courts. And in all cases where he shall be required to attend upon the United States courts, other than those sitting within this state he shall be allowed his necessary and actual expenses, all claims for which shall be audited by the state board of examiners. And there is hereby annually appropriated out of any money in the state treasury not otherwise appropriated, a sufficient sum for the payment of such expenses, not exceeding the sum of five hundred (\$500.00) dollars in any one year.

2. After judgment in any of the causes referred to in the preceding sub-division, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county.

4. To keep a docket of all causes in which he is required to appear, which must during business hours be open to the inspection of the public, and must show the county, district and court in which the causes have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of the proceedings, and, when prosecuted to judgment, a memorandum of the judgment; of any process issued thereon, and whether satisfied or not,

and if not satisfied, the return of the sheriff and if criminal, the nature of the crime, the mode of prosecution, the stage of the proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reasons of the delay or prevention.

5. To exercise supervisory powers over prosecuting attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge.

6. To give his opinion in writing, without fee, to the legislature or either house thereof and to the governor, the secretary of state, state auditor, treasurer, the trustees or commissioners of state institutions, when required, upon any question of law relating to their respective offices.

7. When required by the public service, to repair to any county in the state and assist the prosecuting attorney thereof in the discharge of his duties.

8. To bid upon and purchase, when necessary, in the name of the state, and under the direction of the auditor, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding sub-division has been sold under a prior judgment, or is subject to any judgment, lien, or incumbrance taking precedence of the judgment in favor of the state, under the direction of the auditor, to redeem such property from such prior judgment, lien, or incumbrance and all sums of money necessary for such redemption must, upon the order of the auditor, be paid out of any money appropriated for such purposes.

10. When in his opinion it may be necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as he may find necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the other duties prescribed by law.

12. To report to the governor, at the time required by this Code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from prosecuting attorneys.

1887 R. S. Sec. 250; Laws 1885, 13th Ses. p. 31, sub-div. 1, amended, 1901, 6th Ses. p. 163.

Reports: Sec. 339.

Advice to engineer: Sec. 163.

Duty respecting state lands: Sec. 471.

See duties as member of state boards: Chap. XI.

To prosecute mine owners, when: Sec. 147.

AUTHORITY OF ATTORNEY GENERAL: The attorney general has authority to institute an action in any case in which the rights and interests of the people of the state are directly involved without any new authority expressly conferred by law.—*People v.*

Oakland Water Front Co. 118 Cal. 234, 50 Pac. 305.

This was a suit by the attorney general to quiet the title of the state in lands in navigable waters constituting the harbor of the City of Oakland and Alameda and to determine adverse claims made thereto.

People v. Truckee Lumber Co. 116 Cal. 397, 39 L. R. A. 581, 48 Pac. 374, which was an action by the attorney general on his own information without the intervention of a private relator to enjoin a public nuisance.

DUTY OF ATTORNEY GENERAL: The supreme court of North Dakota in *N. Dak. ex rel. Dakota Hail Association v. Carey*, 2 N. Dak. 36-40, 49 N. W. 164, in an application for a writ of mandamus says: "That in case where the state, as such, is directly interested as a party, the attorney general should apply for a writ, or in some manner signify his assent to the proceedings;" and in *State v. Lord*, 28 Or. 498, 43 Pac. 471, the court says: "In cases of purely public concern, affecting the welfare of the whole people, or the state at large, the action of the court can be invoked only by such executive officers of the state, who are by law entrusted with such duties."

The attorney general has power, whenever in his opinion the public service requires it, to assist the prosecuting attorney. When he thus assists the prosecuting attorney, he may by virtue of his "supervisory power over the prosecuting attorneys in all matters pertaining to the duties of their

offices" assume a paramount control and direction of the business he and the prosecuting attorney are jointly conducting.—*County of Sacramento v. C. P. R. R. Co.* 61 Cal. 250.

EFFECT OF SIGNATURE OF ATTORNEY GENERAL TO COMPLAINTS OR BILLS: The mere signature of the attorney general, or other public law officer, in his official capacity to a complaint or bill shown to be that of a private relator, is not sufficient to impress it with the functions and capacities of an information competent to put in motion the machinery of the courts, whereby they will take cognizance of the questions pertaining to the high prerogative powers of the state, or affecting the whole people in their sovereign capacity.—*State v. Lord*, 28 Or. 498, 43 Pac. 471.

When a suit is instituted in the name of the state by the permission of the attorney general upon the relation of the real party in interest, seeking relief, and the state has no direct interest in the event of the suit, the attorney general, as such, has no power to control the conduct of the suit or to withdraw his consent to the use of the name of the people to the prejudice of the name of the relator.—*People v. N. S. F. H. and R. R. A.* 38 Cal. 564.

The name of the state, as a party plaintiff is unauthorized in an action to enforce an individual right of a private person.—*State ex rel. Gilbert v. Union Inv. Co.* 7 S. Dak. 51, 63 N. W. 232.

Section 134. Salary. The attorney general, during his continuance in office, shall receive as compensation in full for all services rendered by him in any official capacity or employment whatever during his term of office as such attorney general, two thousand dollars per annum.

1887 R. S. Sec. 251.

By new Commission, following Const. Art. IV, Sec. 19.

Section 135. Official Bond: The attorney general must execute an official bond in the sum of five thousand dollars.

1887 R.S. Sec. 252.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION.

Section 136. Duties: The duties of the state superintendent of public instruction are prescribed in Title V, Chapter XXXV of this Code.

New Sec. by Commission.

Section 137. Salary: The state superintendent of public instruction, during his continuance in office, shall receive as compensation in full for all services rendered by him in any official capacity

or employment whatever during his term of office as such superintendent of public instruction, one thousand five hundred dollars per annum.

By new Commission, following Const. Art. IV, Sec. 19.

Section 138. Official Bond: Before entering upon the duties of his office the state superintendent of public instruction shall take and subscribe to the oath prescribed by the constitution, and execute a bond in the penal sum of two thousand dollars, payable to the State of Idaho with sureties to be approved by the governor, conditioned upon the faithful performance of his official duties, and the delivery to his successor of all books, papers, documents and other property belonging to the office. Said bond and oath shall be deposited with the secretary of state.

1899, 5th Ses. p. 86, Sec. 6; 1893, 2d Ses. p. 188, Sec. 6.

CHAPTER VI.

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Section 143. To Visit and Examine Mines: It shall be the duty of the inspector of mines, at least once each year, to visit in person each mining county in the State of Idaho and examine all such mines therein as, in his judgment, may require examination for the purpose of determining the condition of such mines as to safety, and to collect information and statistics relative to mines and mining and the mineral resources of the state, and to collect, arrange and classify mineral and geological specimens found in this state and to forward the same to the state school of mines.

1899, 5th Ses. p. 222, Sec. 4; 1895, 3d of 1893, 2d Ses. p. 153, Sec. 4.
Ses. p. 161, Sec. 3, amendment of act

Section 144. Examination; Notice to Owner; Notice Prima Facie Evidence: Said inspector shall have full power and authority, at all reasonable hours, to enter and examine any and all mines in this state, and shall have the right to enter into any and all mine stopes, levels, winzes, tunnels, shafts, drifts, cross-cuts, workings and machinery for the purpose of such examination; and the owner, lessor, lessee, agent, manager or other person in charge of such mine or mines, shall render the inspector such assistance as may be required by the inspector to enable him to make a full, thorough and complete examination of each and every part of such mine or mines, and whenever, as a result of the examination of any mine (whether such examination is made in consequence of a complaint, as hereinafter provided, or otherwise) the inspector shall find the same to be in an unsafe condition, he shall at once serve, or cause to be served, a written notice upon the owner, lessor, lessee, agent, manager, or other person in charge of such mine, stating in detail in what particular or particulars the mine is dangerous or insecure, and shall require all necessary changes to be made, without delay, for the purpose of making said mine safe for the employees therein, and in case of any criminal or civil proceeding at law against the party or parties so notified, on account of the loss of life, or bodily injury sustained by any employee subsequent to the service of such notice, and in consequence of a neglect or refusal to obey the inspector's requirement, a certified copy of the notice served by the inspector shall be prima facie evidence of the culpable negligence of the party or parties so notified.

1899, 5th Ses. p. 222, Sec. 5, criminal Ses. p. 162, Sec. 4, first portion from
portion Sec. 4761 Penal Code; 1895, 3d Laws 1893, p. 153, Sec. 5.

Section 145. Office; Reports from Owners of Mines: The inspector of mines shall be provided with a properly furnished office, at the state house in Boise City, Idaho, in which he shall carefully keep a complete record of all mines examined showing the date of examination, the condition in which the mines were found, the manner and method of working, the extent to which the laws are obeyed, and what recommendations, if any, were ordered by the inspector.

It is hereby made the duty of the owner, lessor, lessee, agent,

manager or other person in charge of each and every mine, of whatever kind or character, within the state to forward to the inspector of mines at his office, not later than the first day of June in each year, a detailed report showing the character of the mine, the number of men then employed and the estimated maximum number of men to be employed therein during the ensuing year, the method of working such mine and the general condition thereof, and such owner, lessor, lessee, agent, manager or other person in charge of any mine within the state, must furnish whatever information relative to such mine as the inspector of mines may from time to time require for his guidance in the proper discharge of his official duties.

1899, 5th Ses. p. 223, Sec. 6; 1895, 3d 1893, p. 153.
Ses. p. 162, Sec. 5; amendment of laws

Section 146. Notice of Danger, Form of. Duty of Inspector: Whenever the inspector of mines shall receive a formal complaint in writing, signed by three or more persons, setting forth that the mine in which they are employed is dangerous in any respect he shall, in person, visit and examine such mine: *Provided*, Every such formal complaint shall in all cases specifically set forth the nature of the danger existing at the mine and shall describe with as much certainty as is possible, how such danger, apparent or real, renders such mine dangerous, and shall set forth the time when such danger was first observed, and shall distinctly set forth whether or not any notice of such defect or danger has been given by the complainants, or any one else to their knowledge, to the superintendent or other person in charge of such mine, and if no such complaint has been made to such superintendent or other person in person in charge, the reason why it has not been made: *Provided further*, That all complaints shall be duly verified by the parties complaining, before some officer authorized by law to administer oaths. After such complaint shall have been received by the inspector of mines, it shall be the duty of such inspector to serve a certified copy thereof, but without the names of the complainants, upon the owner, lessor, lessee, agent, manager, or other person in charge, and, as soon as possible after receiving such complaint, to visit and examine such mine, and if from such examination he shall find such complaint to be just, he shall give notice in writing of the danger existing to the owner, lessor, lessee, agent, manager, or other person in charge thereof, and in such notice may, in his discretion, order such mine or workings in which such danger exists, closed until such danger has been removed. The names of complainants complaining as in this section provided, shall not, under any circumstances, be divulged to any person by said inspector except such action be necessary in the administration of justice in the courts of the state.

1899, 5th Ses. p. 223, Sec. 7; 1895, 3d of 1893, 2d Ses. p. 154, Sec. 7.
Ses. p. 163, Sec. 6; amendment of act

Section 147. Inspector Shall Notify Attorney-General, When: It shall be the duty of the inspector of mines upon the neglect or refusal of any owner, lessor, lessee, agent, man-

ager, or other person, in charge of any mine or working, notified of the unsafe or dangerous condition of his mine, promptly to comply with the requirements of the notice served upon him, to at once notify the attorney general of such neglect or refusal, and the attorney general must thereupon immediately commence action in the name of the state against the party so notified for the recovery of the penalty mentioned in section 4761 of the Penal Code, in any court of competent jurisdiction, and the amount so recovered shall be paid into the general school fund of the state and constitute a part thereof.

1899, 5th Ses. p. 224, Sec. 8; 1895, 3d 1893, p. 154, Sec. 9.
Ses. p. 164, Sec. 8; amendment of laws

Section 148. To File Annual Report with the Governor: The inspector of mines shall on the first Monday of December of each year, file with the governor of the state a printed report giving:

First.—A list of all accidents that have occurred during the year, the nature and cause of the same, together with the persons killed and injured.

Second.—The number of mines visited, or examined during the year; the number of mines in operation; the number of mines idle; the number of men employed; the wages paid, and the nationality of employees;

Third.—The name and location of each mine in the state, which has been examined and from which the inspector has received a report as provided in Section 145, and all data possible in regard to the manner of working the same; whether by shaft, tunnel, incline or otherwise; the condition of the hoisting machinery, boilers, whims, engines, cars, buckets, ropes and chains, used in the mines; also the appliances used for the extinguishing of fires; the manner and methods of working and timbering the shafts, drifts, inclines, stopes, winzes, tunnels and up-raises through which persons pass to and fro while engaged in their daily labor; the character of the exits from the mine, the methods of ventilation, and the system of signals used in the mine;

Fourth.—The number and character of notices served, together with suggestions and recommendations made; the manner in which such suggestions and recommendations were complied with;

Fifth.—The number of complaints received and actions therein;

Sixth.—The number of prosecutions for neglect or refusal to comply with notices;

Seventh.—A summary of the reports received from mine owners and deputy inspectors;

Eighth.—A full statement containing all available statistical and other information calculated to exhibit the mineral resources of the state, and to promote the development of the same;

Ninth.—Generally, such other information and suggestions as may be deemed advisable.

1899, 5th Ses. p. 224, Sec. 12; 1895, 3d Ses. p. 165, Sec. 12.

Section 149. Salary and Expenses: The inspector of mines shall receive as full compensation for his services a salary of twelve hundred dollars per annum, and ten cents a mile for each mile actually traveled in the discharge of his official duties, and all necessary expenses for clerk hire, postage, stationery, printing, and the compensation of deputies: *Provided*, The total amount of such mileage and expense shall not exceed the sum of two thousand dollars for any one year; such compensation to be paid as the salary and fees of other state officers are paid.

1899, 5th Ses. p. 221, portion of Sec. 2; 1893, 2d Ses. p. 153, portion of Sec. 2.
1895, 3d Ses. p. 160, portion of Sec. 2;

Section 150. May Appoint Deputy Inspectors, Compensation: With the consent and approval of the governor, the inspector of mines may appoint such deputy inspectors as in his judgment may be necessary. Such deputy inspectors shall be allowed as full compensation for all services five dollars per day for each day actually engaged in the performance of their duties.

1899, 5th Ses. p. 224, Sec. 9; 1895, 3d Ses. p. 164, Sec. 9.

Section 151. Duty of Inspector or Deputy in Case of Accident: Whenever a serious or fatal accident shall occur in any mine in the State of Idaho, it shall be the duty of the owner, lessor, lessee, agent, manager or other person in charge thereof, immediately and by the quickest means, to notify the inspector of mines or his deputy, as may be most convenient, of such accident; and upon receiving such notice the inspector or his deputy, or both, shall at once repair to the place of the accident and investigate fully the cause of such accident; and the inspector or his deputy shall be present at any coroner's inquest held over the remains of any person or persons killed in any such accident, and shall have power at such inquest to examine and cross-examine witnesses, and may have process to compel the attendance of necessary witnesses at such inquest. If the inspector or deputy inspector cannot be immediately present in case of a fatal or serious accident occurring, it shall be the duty of the owner, lessor, lessee, agent, manager or other person in charge of the mine in which such accident has occurred, to have statements made and verified by those witnessing such accident; in case of no person being present at the time of the accident, then the statements of those first present thereafter shall be taken, which statements shall be verified, and such verified statements shall be placed in the hands of the inspector or deputy inspector, upon the demand of such officer. Whenever any deputy inspector is present at any coroner's inquest and assists in the examination, he shall at the conclusion thereof at once prepare and forward to the inspector a full and detailed report of the accident, giving all information obtainable regarding the same.

1899, 5th Ses. p. 224, Sec. 10; 1895, 3d Ses. p. 164, Sec. 10.

Section 152. Duties of Deputy Limited: The duties of deputy inspector shall only be such as are indicated in section 151; that is, to attend and act either with or in place of the inspector of

mines in cases of accident, at the scene of such accident, and at coroner's inquests, and to make reports.

1899, 5th Ses. p. 224, Sec. 11; 1895, 3d Ses. p. 165, Sec. 11.

STATE ENGINEER.

Section 153. Manner of Appointment. Term of Office. Qualifications: There shall be appointed by the governor, by and with the advice and consent of the senate, a state engineer, who shall hold his office for the term of four years, and until his successor is appointed and qualified. No person shall be appointed as such state engineer who is not known to have such theoretical and practical qualifications as shall fit him for the position. The governor may remove such state engineer for cause, and, in case of such removal, or in case of death or resignation, appoint a successor.

1899, 5th Ses. p. 282, Sec. 1; 1895, 3d Ses. p. 215, Sec. 1.

Section 154. Office at State Capitol: Such state engineer shall have his office at the state capitol in an office to be provided for him by the secretary of state.

1899, 5th Ses. p. 282, Sec. 2; 1895, 3d Ses. p. 215, Sec. 2.

Section 155. Oath of Office: Before entering upon the duties of his office, said state engineer shall take and subscribe an oath before some duly authorized officer to faithfully perform the duties of his office, and shall file such oath with the secretary of state.

1899, 5th Ses. p. 282, Sec. 3; 1895, 3d Ses. p. 215, Sec. 3.

Section 156. Official Bond: Before entering upon the duties of his office, said state engineer shall file with the secretary of state an official bond in the penal sum of thirty thousand dollars, with not less than two sureties, to be approved by the governor, and conditioned upon the faithful discharge of his duties and for delivery to his successor of all property belonging to the state then in his possession or control.

1899, 5th Ses. p. 282, Sec. 4; 1895, 3d Ses. p. 216, Sec. 4.

Section 157. General Duties as to Streams and Reservoirs: The state engineer shall make or cause to be made careful measurements of the flow in cubic feet per second of the various streams in the state whose waters are, or likely to be, appropriated and used, through that part of the season which he may deem necessary or expedient, to afford information for irrigating purposes, commencing with those streams most used for irrigation. He shall collect facts and make surveys to ascertain suitable locations for reservoirs upon streams where such reservoirs may be possible and beneficial, and shall, as far as possible, determine the cost of constructing such reservoirs, and all other facts possible in regard to quantity of water possible to be stored, the character and extent of land that may be reclaimed by the water from such reservoirs, together with all other information possible that may bear upon the subject. He shall be-

come familiar with the waterways and irrigable land in the state and the needs of the state as to irrigation matters, and all records of any such information shall be the property of the state and open to public inspection. He shall keep full and complete records of all measurements of streams, surveys, examinations or other valuable information that may come into his possession concerning any of the duties of his office, and shall furnish reasonable information in regard to such measurements or surveys to the news papers of the state upon proper request.

1899, 5th Ses. p. 282, Sec. 6; 1895, 3d Ses. p. 216, Sec. 7.

Section 158. Construction of Dams and Dykes: Any person, association or corporation who shall desire to construct any dam or dyke, for the purpose of storing or appropriating or diverting any of the waters of this state, when the same is to be more than ten feet in height, except as otherwise in this chapter provided, shall submit duplicate plans, drawings and specifications of the proposed work to the state engineer who shall as speedily as possible and within forty-five days examine such plans, drawings and specifications, and, if he approve them, he shall affix his approval thereto, and return one copy of each such plan, drawing or specification, with his approval, to the party or parties proposing to construct the works. If the state engineer shall disapprove of such plans, drawings or specifications, he shall return the same with his written objections thereto and suggestions of changes to the party or parties filing the same: *Provided*, Where said dam or dyke is, in the opinion of said engineer, not of sufficient importance to have the provisions of this section apply to such dam or dyke, then said engineer shall have power upon written application to suspend the provisions of this section in regard to such dam or dyke.

In cases of works of great importance, especially where life or property would be endangered by the failure of such works, the state engineer may require excavations to be made to determine the character of the foundation, and require a statement of the facts in the case to be filed in his office before approving such plans, drawings or specifications or he may, if he deems the public interest demands, visit the locality of such proposed works before approval of said plans, drawings or specifications and no rights of any kind under the laws of this state shall be deemed to be obtained, where the proposed works, as in this section provided, have not been approved by the state engineer.

1899, 5th Ses. p. 283, Sec. 7; 1895, 3d Ses. p. 217, Sec. 8.

Section 159. Appeal from Decision of State Engineer: Whenever any party or parties feel aggrieved by the determination of the state engineer in refusing to approve any plan or specification as mentioned in the preceding section, such party or parties may have an appeal to the courts.

1899, 5th Ses. p. 283, Sec. 8; 1895, 3d Ses. p. 218, Sec. 9.

Section 160. Inspection of Dams and Embankments: The state engineer shall inspect, or cause to be inspected, as often as he thinks advisable, every dam or embankment used for holding water in this state, where the same is more than twenty feet in height and if after any such inspection such dam or embankment, in the opinion of the state engineer, is unsafe and the life or property liable to be endangered by reason thereof, he shall order the owner or owners to repair the same so as to make it safe and if such owner or owners shall neglect or refuse to repair the same after a reasonable notice to that effect has been given in writing by the state engineer, the said state engineer shall report the facts in the case to the judge of the district court of the district in which such dam or embankment is situated, who shall, after hearing such facts, if he deem it necessary for public welfare, order the water master of the district in which such dam or embankment is situated, if there be one; if not, the sheriff of the county to draw off such water from behind such dam or embankment and to keep said water drawn off till such time as the orders of the state engineer shall be complied with: *Provided*, That when great damage would result to those depending upon such dam or reservoir embankment for irrigation if such withdrawal of water were made, and when such impending danger to life and property can be prevented at reasonable expense without such withdrawal being first made, the state engineer shall make an estimate of the cost of such necessary repair and report the same to the district judge who shall, if he deem it necessary for the public welfare, order the board of county commissioners of the county in which said works are situated to make, under the direction of the state engineer, such repairs as are recommended by said engineer, and to pay for the same by warrants drawn on the current expense fund of the county. The county auditor and recorder shall immediately present a bill of the amount of such expenses to the person or persons owning or controlling such dam or embankment, and unless the same is paid within three days from the presentation of said bill, or as much as shall not be so paid, shall thereafter become a lien upon the said dam or reservoir embankment and other irrigation works appurtenant thereto, which amount shall be added to the taxes against such property and shall be collected in the manner provided by law for the collection of other taxes.

1901, 6th Ses. p. 196.

Section 161. Duty on Receipt of Report of Dangerous Dam or Embankment: If any person or persons shall report in writing to the state engineer that any dam or embankment, used for holding water, is unsafe and endangering life or property, then it shall be the duty of said state engineer to inspect, or cause to be inspected, such dam or embankment as soon as possible, and, if he considers it unsafe, shall proceed as provided in section 160.

1899, 5th Ses. p. 284, Sec. 10; 1895, 3d Ses. p. 218, Sec. 11.

Section 162. To Give Information Free of Charge: The state engineer shall, free of charge, give any information de-

sired by any person as to the proper method of measuring water, or of constructing an apparatus for such measurement, upon proper application being made; and shall give special instructions to all water masters as to measurement of water so as to secure a just distribution of the same.

1899, 5th Ses. p. 284, Sec. 11; 1895, 3d Ses. p. 219, Sec. 12.

Section 163. May Require Advice from Attorney General: The state engineer may require, and shall receive, from the attorney general of the state advice upon any question of public interest arising in the performance of his duties under this chapter, which advice shall be in writing when so desired by said engineer.

1899, 5th Ses. p. 284, Sec. 12; 1895, 3d Ses. p. 219, Sec. 13.

Section 164. To Make Report to the Governor: The state engineer shall make and render to the governor, biennially, or oftener, if required, full and true reports of his work performed by virtue of his office, which reports shall contain any recommendations he may have to make in reference to legislation affecting his office, or in reference to matters of interest in regard to irrigation that his experience and information may cause him to make.

1899, 5th Ses. p. 284, Sec. 13; 1895, 3d Ses. p. 219, Sec. 14.

Section 165. Additional Duties may Be Required by Governor: In addition to the duties prescribed in this chapter, the state engineer shall perform such other professional duties as may be required of him by the governor, and shall give advice on any matters of a professional nature when called upon by the governor to do so; and shall prepare all maps required for the use of the board of land commissioners.

1899, 5th Ses. p. 284, Sec. 14; 1895, 3d Ses. p. 219, Sec. 15.

Section 166. Salary and Expenses: Said state engineer shall receive a salary of two thousand dollars per year payable monthly by the state treasurer upon warrants drawn by the state auditor, together with his actual expenses, as shown by an itemized bill, necessarily incurred when called away from the state capital in the discharge of his duties in a sum not to exceed five hundred dollars per annum.

1899, 5th Ses. p. 282, Sec. 5; 1895, 3d Ses. p. 216, Sec. 6.

GAME WARDEN.

Section 167. Appointment and Term of Office: The governor, at the beginning of his term of office, shall appoint a competent person as fish and game warden, whose term of office shall be two years, or until his successor is appointed and qualified.

1899, 5th Ses. p. 428, Sec. 1.

Protection of game and fish: Penal Code Chap. CCXIX.

Section 168. Official Bond: Before entering upon his duties, the said warden shall file with the secretary of state, after approval

by the governor, a good and sufficient bond with two or more sureties in the sum of one thousand dollars, conditioned upon the faithful discharge of his duties.

1899, 5th Ses. p. 428, Sec. 2.

Section 169. Salary: Said fish and game warden shall receive as full compensation the sum of twelve hundred dollars per annum, to be paid out of the public treasury, in the same manner as salaries of other state officers.

1899, 5th Ses. p. 428, Sec. 3.

Section 170, To Appoint Deputy in Each County: The fish and game warden is hereby authorized to appoint a special deputy in each county in this state, who shall be a resident of the county for which he is appointed, such special deputy to see that the fish and game laws are observed within the county for which he is appointed.

1899, 5th Ses. p. 428, Sec. 4.

Section 171. Compensation of Deputy: Such special deputy shall receive as his compensation one-half of all fines recovered upon prosecution procured by him for violation of the fish and game laws of this state, and shall receive no other compensation.

1899, 5th Ses. p. 428, Sec. 5.

Section 172. Duty to Enforce Laws Relating to Game: It shall be the duty of said warden and his deputies to enforce all the laws relating to game and fish; he or any of his deputies shall arrest, or cause to be arrested, all violators thereof and prosecute the same; he and each of his deputies shall have full power to arrest any and all persons who may be found violating any of the fish and game laws of the state, when aware of the same of his own knowledge or when informed by sworn information. He and each of his deputies are hereby authorized to arrest without process of warrant any person or persons found violating any of the fish and game laws of the state, when detected in the act, or found with fish or game in their possession at the time of arrest.

1899, 5th Ses. p. 428, Sec. 6.

Arrests, when and how made: Penal Code Sec. 5222 et seq.

CONTROL OF STATE OVER WILD GAME: The wild game within a state belongs to the people in their collective sovereign capacity; it is not the subject of private ownership, except in so far as the people may elect to make it so; and they may, if they see fit, absolutely prohibit the taking of it, or any traffic or commerce in it, if deemed necessary for the protection or preservation of the public good.—Ex parte, Maier, 103 Cal. 476, 37 Pac. 402; State v. Rodman, 58 Minn. 393, 59 N. W. 1098.

To hunt or kill game is a boon or privilege, granted, either expressly or

impliedly, by the sovereign authority—not a right inhering in each individual; and, consequently, nothing is taken away from the individual when he is denied the privilege, at stated seasons, of hunting and killing game.—*Magner v. People*, 9 Ill. 820.

The right of the state to provide and enforce regulations respecting the protection and preservation of game has been frequently upheld by the supreme court of the United States.—See *McCready v. Virginia*, 94 U. S. 395; *Manchester v. Massachusetts*, 139 U. S. 240; *Geer v. Connecticut*, 161 U. S. 519.

ARREST WITHOUT WARRANT: An arrest without a warrant may be authorized by the legislature for other misdemeanors committed in the pres-

ence of an officer as well as for breach of the peace.—*Burroughs v. Eastman*, 101 Mich. 419, 24 L. R. A. 859, 59 N. W. 817.

But an officer has no authority, unless expressly given, to arrest without a warrant for a mere statutory mis-

demeanor not amounting to a breach of the peace. — *Commonwealth v. Wright*, 158 Mass. 149, 19 L. R. A. 206, 33 N. E. 82.

See on subject of arrest without warrant, note to *State of North Carolina v. Hunter*, 8 L. R. A. 529.

Section 173. Duty of Certain Officers to Enforce Game Laws: It is hereby made the duty of the fish and game warden and all deputy wardens appointed under the provisions of this chapter, and every sheriff, deputy sheriff, city marshal, constable and police officer within their respective jurisdictions within the State of Idaho, to enforce all laws for the protection of game and fish; and such sheriffs, deputy sheriffs, constables, city marshals, police officers, and each of them by virtue of their election and appointment, are hereby created and constituted ex-officio fish and game wardens for their respective jurisdictions and they and each of them, and each and every fish and game warden appointed under the provisions of this chapter, shall have authority to, and it shall be their duty to inspect all depots, warehouses, cold storage rooms, storehouses, store rooms, hotels, restaurants, markets and all packages or boxes held either for storage or shipment which they shall have reason to believe contain evidence of the infraction of any of the provisions of this chapter. And if, upon inquiry, said officer discovers evidence sufficient in his judgment to secure a conviction of the offender, or shall have good cause to believe that such sufficient evidence exists to justify the same, he shall at once institute proceedings to punish the said alleged offender.

1899, 5th Ses. p. 431, Sec. 29.

RIGHT TO SEARCH: Unreasonable search and seizure are prohibited by the Constitution, Article I, Section 17. On this subject, Justice Cooley, says: "The only lawful mode of making search upon one's premises is under command of search warrants, and these are allowed to discover stolen or smuggled goods or implements of gam-

ing, and for a few other cases for which provision must be found in the statute."—*Cooley on Torts*, 295, also *Cooley's Constitutional Limitations*, 364 to 370.

The section of the constitution above cited provides that "no warrant shall issue without probable cause shown by affidavit particularly describing the place to be searched and the person or thing to be seized."

Section 174. Power to Arrest Without Warrant: Any fish and game warden appointed under the provisions of this chapter, and any sheriff, deputy sheriff, city marshal, constable or police officer may without warrant arrest any person by him found violating any of the provisions of any act or acts enacted and in force at any time for the protection of game and fish, and take such person or persons before a justice of the peace, probate or municipal judge having jurisdiction, who shall proceed without delay to hear, try and determine the matter and give and enter judgment according to the allegations and proof. All such actions shall be brought in the name of the State of Idaho, and shall be prosecuted by the prosecuting attorney of the county in which such action is had.

1899, 5th Ses. p. 432, Sec. 30.

SHEEP INSPECTOR.

Section 175. Creation of Office; Appointment; Qualification : The office of sheep inspector for the State of Idaho is hereby created. It shall be the duty of the governor, to appoint some suitable, capable and discreet person and practical sheep grower to fill said office.

1901, 6th Ses. p. 142, Sec. 1.

Section 176. Term of Office. Official Bond: Said state sheep inspector shall hold his office for the term of two years, and until his successor is appointed and qualified, unless sooner removed by the governor. Before entering upon the discharge of his duties as such officer, he shall file an official bond in the sum of five thousand dollars conditioned for the faithful performance of the duties of his office, in form and manner as other official bonds of state officers.

1901, 6th Ses. p. 143, Sec. 3.

Section 177. Salary: The sheep inspector shall receive as full compensation for his services a salary of twelve hundred dollars per annum to be paid as the salary and fees of other state officers are paid.

1901, 6th Ses. p. 142, portion Sec. 2.

Section 178. General Reference: The duties of the state sheep inspector and his deputies are designated in Title III Chapter XVII of this Code.

New Sec. by Commission.

STATE INSPECTOR OF HORTICULTURE.

Section 179. General Reference: The manner of selection of the state inspector of horticulture and his duties are designated in Title III, Chapter XVIII of this Code.

New Sec. by Commission.

STATE INSURANCE COMMISSIONER.

Section 180. Appointment and Qualifications: There shall be appointed by the governor, by and with the advice and consent of the senate, an insurance commissioner who shall hold his office for two years and until his successor is appointed and qualified. No person shall be appointed as such commissioner who is not a citizen of the state and who is not experienced in matters of insurance. The governor may remove such commissioner for cause, and in case of such removal, or in case of death or resignation, appoint a successor.

1901, 6th Ses. p. 165, Sec. 1.

Section 181. Office at State Capitol: Such insurance commissioner shall have his office at the state capitol in an office provided for him by the secretary of state.

1901, 6th Ses. p. 166, Sec. 2.

Section 182. Oath of Office: Before entering upon the duties of his office said commissioner shall take and subscribe an oath before some duly authorized officer, to faithfully perform the duties of his office, and shall file such oath with the secretary of state.

1901, 6th Ses. p. 166, Sec. 3.

Section 183. Official Bond: Before entering upon the duties of this office said commissioner shall file with the secretary of state an official bond in the penal sum of ten thousand dollars, by a fidelity or guarantee company, or a bond with not less than four responsible sureties, to be approved by the governor, and conditioned upon the faithful discharge of his duties, and for the delivery to his successor of all property belonging to the state then in his possession or control.

1901, 6th Ses. p. 166, Sec. 4.

Section 184. Seal: Said commissioner shall have a seal of office of suitable design copied from the great seal of the state.

1901, 6th Ses. p. 166, Sec. 5.

Section 185. Must Not be Interested: No person who is director, officer or agent of or directly or indirectly interested in any insurance company, except as insured, shall be such commissioner.

1901, 6th Ses. p. 166, Sec. 6.

Section 186. Salary: The said insurance commissioner shall receive a salary of fifteen hundred dollars per year, payable monthly by the state treasurer out of the general fund upon warrant drawn by the state auditor. Said insurance commissioner shall also be allowed not to exceed ten hundred dollars per annum, payable in the same manner as his own salary, for clerk hire and expenses.

1901, 6th Ses. p. 166, Sec. 7.

Section 187. Duties of: The insurance commissioner shall be charged with the execution of the laws relating to insurance and insurance companies doing business in this state, and he shall do and perform such other duties as may be required of him by law.

1901, 6th Ses. p. 166, Sec. 8.

Section 188. Reports: It shall be the duty of such commissioner to make such reports of the business of his office and the information therein collected and preserved as the governor may require, and all such reports shall be by the governor laid before the legislature at its next session after they shall have been made and printed.

1901, 6th Ses. p. 166, Sec. 9.

CHAPTER VII.

IMMIGRATION, LABOR AND STATISTICS.

Section.

IMMIGRATION, LABOR AND STATISTICS.

189. Establishment of bureau.

190. Commissioner, appointment, term, salary, etc.

191. Secretary of state to provide office, etc., records.

192. Commissioner to collect and compile statistics.

Section.

193. Method of securing data.

194. To make exhibits of products.

195. Printing and distribution of information.

196. Cost of printing, etc., limitation of expense.

197. Commissioner to collect labor statistics.

198. Annual report of commissioner.

Section 189. Establishment of Bureau: In conformity with the requirements of section 1, article 13, of the constitution of the State of Idaho, a bureau of immigration, labor and statistics for the state is hereby established.

1899, 5th Ses. p. 394, Sec. 1.

Section 190. Commissioner, Appointment, Term, Salary, Etc.: It shall be the duty of the governor, by and with the consent of the senate, to appoint immediately after the passage of this act a competent person as commissioner of immigration, labor and statistics, who shall have charge of said bureau, and who shall hold his office for the term provided in said article 13 of the constitution. He shall receive a salary of eighteen hundred dollars per year, and all necessary traveling expenses not exceeding six hundred dollars per annum while traveling in the discharge of his official duties, to be paid as are the salary and fees of other state officers. Before entering upon the duties of his office, he shall take oath for the faithful discharge of the duties thereof, the same as other state officers.

1899, 5th Ses. p. 394, portion of Sec. 2.

Section 191. Secretary of State to provide Office, Etc. Records: The secretary of state shall provide suitable room for the use of said bureau, and furnish the necessary fuel, light and appurtenances. All books, papers and documents in the office of said commissioner shall be deemed public records of the state and shall be transferred by him to his successor in office.

1899, 5th Ses. p. 394, portion of Sec. 2.

Section 192. Commissioner to Collect and Compile Statistics: It shall be, and is hereby made, the duty of said commissioner to collect and compile all reliable data and information at his command, concerning the climate, soil and various resources of the state; its agricultural, horticultural, mineral, timber and grazing lands, and industries, and the development thereof, the water courses and lakes of the state in reference to irrigation, manufacturing, mechanical and other uses; the various crop products, and the adaptability of different soil and localities for the production of different crops; the number, kinds and value of domestic animals in the state, with the useful information regarding the same; the number of public schools, educational institutions, churches, charitable and frater-

nal organizations; health and pleasure resorts, and health statistics of the state; the number and mileage of railroads and other transportation lines; the number and capacity of irrigation canals and the lands covered by the same; the number and location of newspapers and periodicals in the state; the amount of public and school lands, and that belonging to various public institutions of the state; the wages and hours of labor, both skilled and common, and its relation to capital, and, generally any information, which, if disseminated abroad, would tend to the development of the state by inducing population and capital within its borders. Said commissioner shall also inform himself in regard to suitable locations for agricultural and horticultural colonies in the state, and use all facilities at his command for encouraging and promoting desirable enterprises of this kind. To this end, he shall endeavor to secure low rates of transportation favorable to immigrants by urging the co-operation of railroads and other corporations interested in the settlement of the state. He shall also open correspondence with, and answer any and all inquiries from those seeking information in regard to the resources of the state.

1899, 5th Ses. p. 394, Sec. 3.

Section 193. Method of Securing Data: In order to enable said commissioner to secure the above required information, he is hereby clothed with the power to call upon the officers of the state, county assessors, superintendents of public instruction, and other officers, for such information as he may desire and deem valuable in his department.

1899, 5th Ses. p. 395, Sec. 4.

Section 194. To Make Exhibits of Products: It shall be the duty of the commissioner to keep in his office for exhibit such samples of the productions of the state, including grains, grasses, fruits, vegetables, minerals, manufactured articles and other products, as may be contributed by towns and counties, without expense to the state, the same to be arranged so that each town or county shall receive due credit therefor. He shall, whenever practicable, organize and encourage local exhibits at such points as would tend to advertise the resources of the state, and, whenever funds are available for such purposes, shall also make, or cause to be made, exhibits of the products and industries of the state, at such industrial and international exhibitions in other states, as the governor shall direct.

1899, 5th Ses. p. 395, Sec. 5.

Section 195. Printing and Distribution of Information: Said commissioner shall cause to be printed and distributed such pamphlets, circulars, cards and maps, and to publish, from time to time, through the public press, such information as, in the judgment of said commissioner, would tend to carry out the objects sought by this chapter, and result in the largest possible benefit to the state.

1899, 5th Ses. p. 395, Sec. 6.

Section 196. Cost of Printing, Etc., Limitations of Expense: Said commissioner shall receive the salary and mileage heretofore provided for, and be allowed the actual cost of the printing and supplies necessary for the publication and distribution of the matter heretofore mentioned: *Provided*, That the allowance for such printing and supplies shall not exceed the aggregate sum of two thousand dollars in any one year.

1899, 5th Ses. p. 395, Sec. 7.

Section 197. Commissioner to Collect Labor Statistics: The commissioner shall collect information upon the subject of labor, its relation to capital, the hours of labor, and the earnings of laboring men and women, and the means of promoting their material, social, intellectual, and moral prosperity, and assort, systemize, print and present in annual reports to the governor, on or before the first day in January of each year, statistical details relating to all departments of labor in this state, including the penal institutions thereof, particularly concerning hours of labor, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics, and apprentices, wages earned, the savings from the same, the culture, moral and mental, with age and sex, of laborers employed, and number and character of accidents, the sanitary condition of institutions and other places where labor is employed, as well as the influence of the several kinds of labor, and the use of intoxicating liquors upon the health, and mental condition of the laborer, the restrictions, if any, which are put upon apprentices when indentured, the proportion of married laborers and mechanics who live in rented houses, with the annual rental of same, the average number of members in the families of married laborers and mechanics; the value of property owned by laborers and mechanics, together with the value of property owned by such laborers or mechanics (if foreign born), upon their arrival in this country, and the length of time they have resided here, the subject of co-operation, strikes, or other labor difficulties, trades unions, and other labor organizations, and their effects upon labor and capital, with such other matter relating to the commercial, industrial, and sanitary condition of the laboring classes, and permanent prosperity of the respective industries of the state, as such bureau may be able to gather, accompanied by such recommendations relating thereto, as the bureau shall deem proper.

1899, 5th Ses. p. 396, Sec. 9.

Section 198. Annual Report of Commissioner: The commissioner shall, on or before the first day of January in each year, transmit to the governor a full and complete report of the doings of his office, (including a tabulated statement of all statistics accumulated in his office), and a detailed and itemized account of the expenses thereof.

1899, 5th Ses. p. 395, Sec. 8.

CHAPTER VIII.

JUDICIAL DEPARTMENT.

Section.

GENERAL PROVISIONS.

199. Courts of the state.

200. Salaries of supreme and district judges.

201. General reference.

SUPREME JUSTICES.

202. Number and term of office.

Section.

203. Expenses.

DISTRICT JUDGES.

204. Number and term of office.

205. Expenses.

206. Report of expenses by district judges.

GENERAL PROVISIONS.

Section 199. Courts of the State: The judicial department of the state shall consist of a state senate as a court for trial of impeachments, a supreme court, district courts, probate courts, courts of justices of the peace and such other courts inferior to the supreme court as may be established by law for any incorporated city or town.

New Sec. by Commission conforming to Const. Art. V, Secs. 2 and 3.

Section 200. Salaries of Supreme and District Judges: The salary of the justices of the supreme court and the salary of the judges of the district court shall be three thousand dollars each per annum.

New Sec. by Commission conforming to Const. Art. V, Sec. 17.

DISPOSITION OF CASES SUBMITTED, EFFECT ON SALARY: The constitution, Article V, Section 17, provides that no justice of the supreme court, or judge of the district court, shall be paid his salary, or any part thereof, unless he shall have first taken and subscribed to an oath that there is not in his hands any matter in controversy not decided by him, which had been finally submitted for his consideration and determination thirty days prior to the taking and subscribing such oath.

The supreme court of California in passing upon a similar provision of the constitution in that state says: "There

is nothing in the provision which indicates the intention that the forfeiture of salary should be a result of the failure to decide all cases within ninety days, but the purpose of the provision was to prohibit the judge from receiving his monthly salary until all cases which had been submitted for ninety days were decided. If, for instance, there were cases pending undecided on the 31st day of August, which had been submitted for ninety days, the judge was not entitled at that time to his salary for that month. But if such cases were decided on the first of September, he then would have a right to demand immediately a warrant for his salary in August."—*Meyers v. Canfield*, 62 Cal. 512.

Section 201. General Reference: The general provisions concerning probate judges and justices of the peace will be found under Title VIII, "Government of Counties."

New Sec. by Commission.

SUPREME JUSTICES.

Section 202. Number and Term of Office: The supreme court shall consist of three justices, each of whose term of office shall commence on the first Monday of January next after his election and shall continue for a period of six years and until his successor is elected and qualified.

New Sec. by Commission compiled from Const. Art. V, Sec. 6, Laws of 1899, p. 67, Sec. 1, p. 69, Sec. 5.

Vacancies, how filled: Sec. 911.

Majority may act: General provis-

ions applicable to all the Codes, Sec. 15. 2983 et seq. Also Const. Art. V, Secs. 9
Also Const. Art. V, Sec. 6. and 10.
Jurisdiction: Code Civil Proc. Sec.

Section 203. Expenses: There must be paid to each of the justices of the supreme court, out of the state treasury, for each term of the supreme court held at the city of Lewiston, his actual expenses not exceeding two hundred dollars.

1899, 5th Ses. p. 181; 1893, 2d Ses. p. 66.

DISTRICT JUDGES.

Section 204. Number and Term of Office: There shall be a district judge for each judicial district in the state whose term of office shall commence on the first Monday of January next after his election and shall continue for a period of four years and until his successor is elected and qualified.

New Sec. by Commission compiled from Const. Art. V, Sec. 11, Laws 1899, p. 67, Sec. 1, p. 69, Sec. 5.

Who eligible: Const. Art. V, Sec. 23.
Legislature may increase or reduce number of judges: Const. Art. V, Sec. 11.

The constitution requires "a judge"

for each district, and there must be at least one judge, but there is no limitation upon the legislature to provide for more, if the necessity arises. State ex rel. Kinsworthy v. Martin, 60 Ark. 343, 28 L. R. A. 153, 30 S. W. 421.

Jurisdiction of courts: Code Civil Proc. Sec. 2993 et seq. Also Const. Art. V, Sec. 20.

Section 205. Expenses. There must be paid to each of the judges of the district courts, out of the state treasury, for each term of a district court held by him for the trial and disposition of causes and the transaction of business under the laws of the state, in other counties than that in which he resides, his actual expenses, not exceeding one hundred dollars for traveling and holding each term.

1899, 5th Ses. p. 181; 1893, 2d Ses. p. 66.

Section 206. Report of Expenses by District Judges: Each of the judges of the district court may semi-annually, on the first day of January and July of each year make and certify an account against the state showing the number of such terms of the district court that have been held by him during the six months next preceding the date of such account; such account to contain a statement of the amount of his expenses, and transmit the same to the state auditor, and upon receipt of such account, and its allowance by the board of examiners, said auditor must issue to the judge so certifying a state warrant not exceeding one hundred dollars for each term so certified to have been held by him. Such warrants must be drawn upon the general fund of the state and must be paid in the same manner as other warrants on that fund are paid.

1887 R. S. Sec. 6150; 1895, 3d Ses. p. 96.

CHAPTER IX.

MINISTERIAL AND OTHER OFFICERS CONNECTED WITH THE COURTS.

Section.

CLERK OF THE SUPREME COURT.

- 207. Appointment, term.
- 208. Duties.
- 209. Office and supplies.
- 210. Filing papers.
- 211. Fees.
- 212. Payment of fees to treasurer.
- 213. Responsible for books and papers.
- 214. May administer oaths.
- 215. Prohibitions applicable to.
- 216. May take acknowledgments.
- 217. May appoint one or more deputies.
- 218. Shall appoint a deputy at Lewiston.
- 219. Shall provide supplies for deputy.
- 220. Salary.
- 221. Official bond.

REPORTER OF SUPREME COURT.

- 222. Clerk ex-officio reporter supreme court decisions.
- 223. Decisions, how prepared for publication.
- 224. Reports copyrighted for benefit of state, when to be published.
- 225. Contract to print.
- 226. Contractor to give bond.
- 227. Secretary of state to receipt to contractor.

CLERK OF DISTRICT COURT.

- 228. Number and term of office.
- 229. Must attend court.
- 230. Duties.
- 231. May appoint deputy.
- 232. Residence and duties of deputies.
- 233. Official bond.
- 234. Wrongful act or omission, liability.

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- 235. Appointment.
- 236. Qualifications and residence.
- 237. Oath of office and bond.
- 238. Oath and bond to be filed with secretary.

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- 239. Certificate of secretary transmitted to clerk of district court.
- 240. Duties.
- 241. Protest is prima facie evidence.
- 242. Records of, on death or disqualification.
- 243. Copies of records of a predecessor.
- 244. Fees.
- 245. Liability on bond.

COMMISSIONERS OF DEEDS.

- 246. Appointment.
- 247. Official oath, when and where filed.
- 248. Powers.
- 249. Effect of act done by.
- 250. Fees.
- 251. Certified copy of subdivision to be furnished commissioner.
- 252. Fees of secretary.

COURT REPORTER.

- 253. Appointment and term of office.
- 254. Oath of office and official bond.
- 255. Duties.
- 256. To file stenographic records.
- 257. To furnish type-written copy of record, fee.
- 258. Time for delivery of copy.
- 259. Salary and expenses.

ABSTRACTORS OF TITLES.

- 260. Must file bond.
- 261. Probate judge to register abstractors.
- 262. Certificate of probate judge, abstracts as evidence.
- 263. Life of bond, additional security, failure to furnish.
- 264. Appeal from decision of probate judge.

OTHER OFFICERS.

- 265. Crier, bailiff, and messenger.
- 266. Per diem of crier, bailiff and messenger.
- 267. Per diem how paid.

CLERK OF THE SUPREME COURT.

Section 207. Appointment; Term: The clerk of the supreme court shall be appointed by the court and shall hold his office during the pleasure of the court.

New Sec. by Commission compiled from Const. Art. V, Sec. 15.

Section 208. Duties: The clerk of the supreme court must perform such duties as are prescribed in the Penal Code and Code of Civil Procedure, and such duties as may be required of him by the rules and practice of the court.

1887 R. S. Sec. 260.

Section 209. Office and Supplies: He must keep his office in the capitol building and provide himself with necessary books and stationery for state business, and the bills for said books and stationery when audited and allowed must be paid by the state treasurer out of any moneys in the treasury appropriated therefor.

1887 R. S. Sec. 263, rewritten by Commission to conform to constitutional provision creating board of examiners.

Section 210. Filing Papers: He must file all papers that maybe legally lodged with him for that purpose, noting the day, month, and year when so filed.

1887 R. S. Sec. 264; compiled laws 1875, p. 821; 1864, 2d Ses. p. 424.

Section 211. Fees: The clerk of the supreme court may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law.

For filing each transcript of record from an inferior court, one dollar; for entering any motion, rule, or order, fifty cents; for entering judgment, for each folio, thirty cents; for each certificate given at request, and under seal, fifty cents; for copy of record, or opinion of court, or other paper, for each folio, twenty cents; for entering each cause on calendar, and making copy for bar, fifty cents; for filing each paper, twenty-five cents; for every remittitur or mandate for each folio, twenty cents; for certificate of admission, as attorney or counselor, including seal, oath and order, two dollars; for administering oath, or affirmation, including jurat, twenty-five cents; for taking and writing out acknowledgements of deeds, or other instruments, for each signature, including seal, fifty cents; for recording opinion of court, each folio, twenty cents; for issuing any process of court, including seal, one dollar.

1887 R. S. Sec. 262; compiled laws 1875, p. 821; 1871, 6th Ses. p. 71; 1864, 2d Ses. p. 497.

Section 212. Payment of Fees to Treasurer: The clerk shall, on the first day of January, April, July and October, of each year deliver to the state auditor a statement, verified by oath, showing the different items of fees received or charged by him, from whom, at what time, and for what services, during the preceding three months, and on the same day he shall pay to the state treasurer the amount of said fees, who shall give his receipt therefor, and, upon exhibition of said receipt, the auditor shall draw his warrant upon the treasury for the amount of salary due.

1899, 5th Ses. p. 7, portion of Sec. 6; 1893, 2d Ses. p. 64, portion of Sec. 4. 1891, 1st Ses. p. 11, portion of Sec. 3;

Section 213. Responsible for Books and Papers: He is responsible for the safe custody and delivery to his successor of all books and papers belonging to his office.

1887 R. S. Sec. 265; compiled laws 1875, p. 821; 1864, 2d Ses. p. 424.

Section 214. May Administer Oaths: He may administer oaths in every case where an oath is authorized by law.

1887 R. S. Sec. 266; compiled laws 1875, p. 821.

Section 215. Prohibitions Applicable to: He must not practice as an attorney or counselor, nor be surety or bail in any case in the court of which he is clerk.

1887 R. S. Sec. 267; compiled laws 1875, p. 821; 1864, 2d Ses. p. 424.

Section 216. May Take Acknowledgements: He is authorized to take acknowledgements of deeds and instruments of writing under the seal of his office.

1887 R. S. Sec. 268; compiled laws 1875, p. 821; 1864, 2d Ses. p. 424.

Section 217. May Appoint One or More Deputies: The clerk of the supreme court may appoint one or more deputies.

1899, 5th Ses. p. 6, portion of Sec. 4; amendment of laws 1891, 1st Ses. p. 11, 1893, 2d Ses. p. 64, portion of Sec. 3, Sec. 3, portion of.

Section 218. Shall Appoint a Deputy at Lewiston: The clerk of the supreme court shall appoint a deputy clerk resident at the city of Lewiston, who shall keep his office in said city, and who shall receive as compensation for his services the sum of five hundred dollars per annum.

1899, 5th Ses. p. 7, Sec. 5; 1893, 2d Ses. p. 63, Sec. 2.

Section 219. Shall Provide Supplies for Deputy: The clerk of the supreme court shall provide records, stationery, furniture and a safe, for the said office of the clerk of the supreme court located at said city of Lewiston, as aforesaid at a cost not to exceed one thousand dollars.

1899, 5th Ses. p. 7, Sec. 6; 1893, 2d Ses. p. 64, Sec. 3; no appropriation has been made by legislature to carry this section into effect, and its purpose not having been accomplished it is still in force.

Section 220. Salary: The salary of the clerk of the supreme court shall be two thousand five hundred dollars per annum; which salary shall be the only compensation he shall receive for all services required of him or of any deputy he may appoint.

1899, 5th Ses. p. 6, Sec. 4, rewritten 4, portion of; 1891, p. 11, portion of by Commission; 1893, 2d Ses. p. 64, Sec. Sec. 3.

Section 201. Official Bond. The clerk of the supreme court must execute an official bond in the sum of five thousand dollars.

1887 R. S. Sec. 269; compiled laws of bond not fixed by laws of 1875 and 1875, p. 820; 1864, 2d Ses. p. 423, amount 1864.

REPORTER OF SUPREME COURT. . .

Section 222. Clerk Ex-officio Reporter Supreme Court Decisions: The clerk of the supreme court shall be ex-officio reporter of the decisions of the supreme court, and shall perform the duties of reporter without additional compensation.

1901, 6th Ses. p. 9, Sec. 1.

Section 223. Decisions, How Prepared for Publication: He must prepare a report of all decisions of such court for publication by giving the title to each case, a syllabus of the points decided, the names of the counsel appearing in the supreme court in

the case, synopsis of the briefs with reference to such standard reports and text books as have a special bearing upon the points decided; and each volume shall contain at the end thereof a full and comprehensive index, alphabetically arranged, and there shall be prefixed thereto a table of cases decided, a table of cases cited and a table of statutes and constitutional provisions construed. All decisions shall be reported in the order in which the decisions were handed down, and said volumes shall be uniform in size and the amount of matter contained with Volume I of Idaho Reports, New Series, and the type shall be similar; the body of the decisions in nothing less than small pica; the head notes in nonpareil, and the paper and binding and all material and work, including sewing, shall be equally as good, and similar to that used in said Volume. Each volume of said reports, when printed, shall contain not less than eight hundred pages, exclusive of the index thereto.

1901, 6th Ses. p. 9, Secs. 2, 3 and 4.

Section 224. Reports Copyrighted for Benefit of State, When to Be Published: The reporter shall have no pecuniary interest in the reports; but, he shall, in his name, for and on behalf of and for the sole benefit of the State of Idaho, copyright each and every volume of said reports before final issue from press. The decisions of the said supreme court, shall be prepared for publication by the reporter as rapidly as possible, and as soon as a sufficient number of decisions are prepared to fill a volume, such volume shall be printed and three hundred copies thereof delivered to the secretary of state.

1901, 6th Ses. p. 9, Sec. 5.

Section 225. Contract to Print: The contract to print the reports of such decisions shall be let by the reporter, with the approval of the justices of the supreme court, or a majority thereof, to some person or persons who will print the same on terms most advantageous to the state, and who will furnish the state with three hundred copies of each volume at a cost not to exceed two and 75-100 dollars per copy per volume, and who will agree to print not less than one thousand volumes and furnish same to residents of this state for five pears at a price not exceeding three and 50-100 dollars per copy per volume: *Provided*, The work shall be done in the State of Idaho, if responsible parties therein offer to do said work on terms as favorable to the state, as any outside bidder.

1901, 6th Ses. p. 11, Sec. 6.

Section 225. Contractor to Give Bond: The person to whom the contract for printing any one or more volumes of reports, under the provisions of this sub-division, may be awarded, shall give a good and sufficient bond, running to the state, in the penal sum of one thousand dollars for each volume, conditioned that he will faithfully perform all the requirements of said contract and all of the provisions of this sub-division. And said contract shall provide that the contractor shall furnish to the reporter, the corrected proof of

the body of any volume of said reports, for final correction and preparation of indices within thirty days after receiving the copy for the body of such report; and, also, that said contractor shall within thirty days after receiving back from the reporter the corrected proof of the body of such volume of reports, accompanied by the final index, complete the printing and binding of three hundred copies of such volume and forthwith deliver the same to the secretary of state.

1901, 6th Ses. p. 11, Sec. 7.

Section 227. Secretary of State to Receipt 1^o Contractor:

The secretary of state shall give to the contracting printer a receipt for all copies of reports of said decisions delivered to him by such printer. And the secretary of state shall keep a correct record in a book kept specially for that purpose, of all volumes and copies thereof received and distributed by him under the provisions of this sub-division and of section 99 of the Political Code, and he shall take a receipt for all copies of such reports distributed by him, and file and preserve the same in his office.

1901, 6th Ses. p. 11, Sec. 8.

CLERK OF DISTRICT COURT.

Section 228. Number and Term of Office: There shall be a clerk of the district court in each county, whose term of office shall commence on the first Monday in January next after his election and shall continue for a period of four years and until his successor is elected and qualified.

New Sec. by Commission compiled from Const. Art. V, Sec. 16, Laws 1899, 5th Ses. p. 34, Sec. 7; p. 67, Sec. 1; p. 69, Sec. 5.

Salary: Chap. LXVI, Sec. 1764.

Section 229. Must Attend Court: The clerk must, in person or by deputy, attend every term of the district court held in his county.

1887 R. S. Sec. 273; compiled laws 1875, p. 791, portion of Sec. 6; 1864, 2d Ses. p. 390, portion of Sec. 3.

Section 230. Duties: The clerk of the district court for each county must perform such duties as are prescribed in the Code of Civil Procedure and in the Penal Code, and such duties as may be required of him by the rules and practice of the court.

1887 R. S. Sec. 270.

Section 231. May Appoint Deputies: The clerk of the district court may appoint such deputies and clerical assistance as is provided for in section 1629 of this Code.

New Sec. by Commission.

Section 232. Residence and Duties of Deputy: The deputy must reside at the county seat of the county for which he is appointed, and must perform all the duties of the office in the absence of his principal. All acts done and process issued by the deputy must be in the name of his principal.

1887 R. S. Sec. 272; latter portion from compiled laws 1875; p. 791, Sec. 5; 1864, 2d Ses. p. 389, Sec. 2.

Section 233. Official Bond: Before entering upon the discharge of the duties of his office the clerk must execute and deposit with the county treasurer an official bond to the state in the penal sum of five thousand dollars with two sufficient sureties to be approved by the board of county commissioners, conditioned that he will faithfully perform the duties of his office and at all times account for and pay over all moneys in his hands as clerk; and the penalty of such bond may at any time be increased by said board. The clerk may require a bond from any deputy. A copy of the bond required of the clerk must be recorded by the county recorder.

1887 R. S. Sec. 274, rewritten by Commission; the law of 1887 requiring the bond to be approved by the district judge and filed with the controller (state auditor) seems to the Commis-

sion inapplicable to the present status of the clerk whose duties are now confined to the county for which he was elected.

Section 234. Wrongful Act or Omission, Liability: For any wrongful act or omission to perform any duty imposed by law, by himself or his deputies, the clerk is liable on his official bond to any person injured.

1887 R. S. Sec. 275; compiled laws 1875, p. 791; 1864, 2d Ses. p. 390.

NOTARIES PUBLIC.

Section 235. Appointment: The governor may appoint and commission in each county as many notaries public as he may deem necessary, who shall hold said office for the term of four years.

1887 R. S. Sec. 285; compiled laws 1875, p. 816; 1873, 7th Ses. p. 59, amendment of act of 1867, 4th Ses. p. 47.

Section 236. Qualifications and Residence: Every person appointed as notary public, must at the time of his appointment, be an elector of the county for which he is appointed, and must continue to reside in such county.

1887 R. S. Sec. 288; compiled laws 1875, p. 819, Sec. 18; 1867, 4th Ses. p. 50, Sec. 18.

Elector: Sec. 786.

Residence: Const. Art. VI, Sec. 5.

Section 237. Oath of Office and Bond: Each notary public before entering upon the duties of his office must take the usual oath of office, which must be indorsed upon his bond, and must execute a bond to the State of Idaho in the sum of one thousand dollars, with two or more sufficient sureties, to be approved by the probate judge of the county for which said notary may be appointed.

1887 R. S. Sec. 286; compiled laws 1875, p. 816, Sec. 2; 1867, 5th Ses. p. 99; amendment of 1867, 4th Ses. p. 47.

gence and skill.—Fogarty v. Finlay et al. 10 Cal. 239; Ferris v. Cooper, 6 Cal. 632.

LIABILITY OF NOTARY: A notary public holds himself out to the world as a person competent to perform the business connected with the office. By accepting the office, he contracted with those who might employ him that he would perform it with integrity, dili-

Where the conditions of a bond of a notary public are that he will "well and truly perform and discharge the duties of a notary public, according to law," this embraces every act which he is authorized or required by law to do in virtue of his office.—Id.

Section 238. Oath and Bond to be Filed with Secretary: The bond with the oath of office endorsed thereon and duly

attested together with a specimen of the signature, and impress of the official seal of the appointee must be filed in the office of the secretary of state. At the issuance of any commission each appointee must pay the sum of ten dollars to said secretary, who must keep an account of the same and pay one-half thereof to the state library fund, and may apply the residue as his fees in that behalf.

1887 R. S. Sec. 287; compiled laws amendment of laws 1867, 4th Ses. p. 47, 1875, p. 817, Sec. 3; 1868, 5th Ses. p. 99; Sec. 3.

Section 239. Certificate of Secretary Transmitted to Clerk of District Court: Each notary, as soon as he has taken his official oath and filed his official bond, must transmit a certificate of the facts, under the hand and seal of the secretary of state, to the clerk of the district court for his county.

1887 R. S. Sec. 294.

Section 240. Duties: It is the duty of a notary public:

1. When requested, to demand acceptance and payment of foreign, domestic and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment, and to exercise such other powers and duties as by law of nations and according to commercial usages, or by the laws of any other territory, state, government or country, may be performed by notaries.

2. To take the acknowledgements or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person, and to give a certificate of such proof or acknowledgement indorsed on or attached to the instrument.

3. To take depositions and affidavits, and administer oaths and affirmations, in all matters incident to the duties of the office, or to be used before any court, judge, officer, or board in this state.

4. To keep a record of all official acts done by him under the first sub-division of this section.

5. When requested, and upon payment of his fees therefor, to make and give a certified copy of any record in his office.

6. To provide and keep an official seal, upon which must be engraved his name, the words "Notary Public," and the name of the county for which he is commissioned.

7. To authenticate with his official seal all official acts.

1887 R. S. Sec. 289, compiled from compiled laws 1875, p. 817-818; 1867, 4th Ses. p. 47-48.

Presentment of negotiable instrument: Civil Code, Sec. 2886.

Notice of dishonor, how and when given: Civil Code, Sec. 2894 et seq.

RIGHTS OF INTERESTED PERSONS TO TAKE ACKNOWLEDGMENTS: In the absence of any statute affecting the question, an officer who is a party to the instrument, is disqualified to take the acknowledgment; but what relationship, or what interest possessed by the officer disqualifies him, must be determined from the facts and circumstances of the case in which the question is pre-

sented, rather than any general rule. *Horbach v. Tyrrell*, 48 Neb. 514, 37 L. R. A. 434, 67 N. W. 485-489, in which case it was held that a notary public is not disqualified from taking an acknowledgment of a mortgage made to a corporation merely because it is shown that he was at the time secretary and treasurer of the mortgagee; it not appearing that he was a stockholder in such corporation or otherwise beneficially interested in having the mortgage made. And in *Cooper v. Hamilton Perpetual B. & L. Ass'n*, 97 Tenn. 285, 33 L. R. A. 338, 37 S. W. 12, it was held that the taking of an acknowledgment by a stockholder and director, who was a notary public, did not make the in-

strument invalid in the absence of any improper conduct, bad faith, or undue advantage arising out of his relation to the corporation. To the same effect is *Havemeyer v. Dahn*, 48 Neb. 536, 33 L. R. A. 332, 67 N. W. 489, holding that an attorney, who was a notary public, was not disqualified from taking an acknowledgment of a mortgage made to his client, merely because he holds for collection the claim secured by such mortgage; it not appearing that the attorney had a beneficial interest in having the mortgage made, nor that the amount of his compensation in any manner depended upon such mortgage being made. As to the right of interested persons to take acknowledgments, see note in 33 L. R. A. 332.

OMMISSIONS IN CERTIFICATE: The omission of the words "notary public" in the signature of a certificate of acknowledgment by a notary, the body of which shows that he was acting officially as a notary public, does not make the certificate invalid.—*Lake Erie & Western R. Co. v. Whitman*, 155 Ill. 514, 28 L. R. A. 612, 40 N. E. 1014.

The omission of venue from a notary

public's jurat does not render it invalid, where he is a state officer the record of whose appointment is required to be kept in the office of the secretary of state.—*Sullivan v. Hall*, 86 Mich. 7, 13 L. R. A. 556, 48 N. W. 646.

Manner of taking depositions: Code Civil Proc. Sec. 4497 et seq.

Compelling attendance of witnesses: Code Civil Proc. Sec. 4506.

CONTEMPT: A notary public is not a judicial officer and cannot arrest or punish for contempt a witness, who having been duly subpoenaed before him for that purpose, refused to be sworn or give his deposition, and the statute purporting to confer such power upon him is invalid.—*Re Huron*, 58 Kan. 152, 36 L. R. A. 822, 48 Pac. 574.

ADMINISTERING OATHS: The authority of notaries public to administer oaths is now universal and should be judicially recognized as one of their general powers. And affidavits authenticated by official seals of notaries of other states placed on the same footing as their authentications of commercial documents.—*Wood v. St. Paul City R. Co.* 42 Minn. 411, 7 L. R. A. 149, 44 N. W. 308.

Section 241. Protest is Prima Facie Evidence: The protest of a notary, under his hand and official seal, of a bill of exchange or promissory note, for non-acceptance or non-payment, stating the presentment for acceptance or payment, and the non-acceptance or non-payment thereof, the service of notice on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice and the reputed place of residence of the party to such bill of exchange or promissory note, and of the party to whom the same was given, and the postoffice nearest thereto, is prima facie evidence of the facts contained therein.

1887 R. S. Sec. 290; Compiled Laws 1875, p. 818, Sec. 12; 1867, 4th Ses. p. 49, Sec. 12.

CERTIFICATE AS EVIDENCE: A certificate of protest is only prima facie evidence of the facts stated. It is not conclusive and any of its statements may be rebutted by competent evidence to the contrary.—*Hendy v. Desmond*, 62 Cal. 260; *Tate v. Sullivan*, 30 Md. 464, 96 Am. Dec. 597.

See exhaustive notes on protest, as evidence, in 96 Am. Dec. 602.

A certificate of protest, though not made until six months after the actual protest of the note, is presumptive evidence of the facts therein stated.—*Union Nat. Bank of Troy v. Williams Milling Co. et al.* (Mich.), 76 N. W. 1.

The books of a notary public in which he keeps the minutes of his official proceedings, are regarded as public records, and the protests registered therein being true and original protests, a certified copy from it is admissible in evidence.—*Phillips v. Poin Dexter*, 18 Ala. 579.

Section 242. Records of, on Death or Disqualification: If any notary die, resign, is disqualified, removed from office, or removes from the county for which he is appointed, his records and all his public papers must, within thirty days, be delivered to the recorder of the county, who must deliver them to the notary's successor when qualified.

1887 R. S. Sec. 291; Compiled Laws 1875, p. 819, Sec. 14; 1867, 4th Ses. p. 49, Sec. 14.

Section 243. Copies of Records of a Predecessor:

Every notary having in his possession the records and papers of a predecessor in office, may grant certificates or give certified copies of such records and papers, in like manner and with the same effect as such predecessor could have done.

1887 R. S. Sec. 292; Compiled Laws Sec. 16.
1875, p. 819, Sec. 16; 1867, 4th Ses. p. 49,

Section 244. Fees: The fees of notaries are as follows:

For drawing and copying every protest for non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft or check, three dollars; for drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft or check, one dollar; for recording every protest, fifty cents; for drawing any paper for which provision is not herein made, for each folio, thirty cents; for taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, fifty cents; for administering and certifying an oath, twenty-five cents; for every certificate under seal, to include writing the same, fifty cents.

1887 R. S. Sec. 293; Compiled Laws 1875, p. 819, Sec. 17; 1867, 4th Ses. p. 49,

Section 245. Liability on Bond: For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all the damages sustained.

1887 R. S. Sec. 295; amendment of 1867, 4th Ses. p. 49, Sec. 13.
Compiled Laws 1875, p. 818, Sec. 13;

COMMISSIONERS OF DEEDS.

Section 246. Appointment: The governor may appoint in each state or territory of the United States, or in any foreign state, one or more commissioners of deeds, to hold office for the term of four years from and after the date of their commission.

1887 R. S. Sec. 300; amendment of Compiled Laws 1875, p. 674, Sec. 1.

Section 247. Official Oath, When and Where Filed:

The official oaths of commissioners of deeds must be filed in the office of the secretary of state within six months after they are taken.

1887 R. S. Sec. 303; amendment of Compiled Laws 1875, p. 674, Sec. 3.

Section 248. Powers: Every commissioner of deeds has power, within the state for which he is appointed:

1. To administer and certify oaths;
2. To take and certify depositions and affidavits;
3. To take and certify the acknowledgement or proof of powers of attorney, mortgages, transfers, grants, deeds, or other instruments for record;

4. To provide and keep an official seal, upon which must be engraved the words "Commisisoner for the State of Idaho," and the name of the commissioner.

5. To authenticate, with his offical seal, all his official acts.

1887 R. S. Sec. 301; amendment of Sec. 1.
Compiled Laws 1875, p. 674, portion of

Section 249. Effect of Acts Done by: All oaths administered, depositions and affidavits taken, and all acknowledgements and proofs certified by commissioners of deeds, have the same force and effect, to all intents and purposes, as if done and certified in this state by any officer authorized by law to perform such acts.

1887 R. S. Sec. 302; amendment of Compiled Laws 1875, p. 674, Sec. 2.

Section 250. Fees: The fees of commisisoners of deeds are the same as those prescribed for notaries public.

1887 R. S. Sec. 304.

Notaries' fees: Sec. 244.

Section 251. Copy of Subdivision to be Furnished Commissioner: The secretary of state must transmit, with the commission, to the appointee, a certified copy of this sub-division. sections 245 to 252 inclusive.

1887 R. S. Sec. 305; Compiled Laws 1875, p. 675, Sec. 4.

Section 252. Fees of Secretary: The secretary of state is entitled to receive a fee of five dollars for issuing each commission under the provisions of this sub-division, to be paid by the party applying therefor.

1887 R. S. Sec. 306; Compiled Laws 1875, p. 675, Sec. 5.

COURT REPORTERS.

Section 253. Appointment and Term of Office: There shall be appointed within and for each of the judicial districts of this state, by the district judge, a stenographic reporter, who shall be well skilled in the art of stenography, and capable of reporting the oral proceedings in court verbatim. He shall hold his office during the pleasure of said judge.

1899, 5th Ses. p. 163, Sec. 1; 1895, 3d Ses. p. 69; 1891, 1st Ses. p. 233, repealing act of 1889, 15th Ses. p. 25.

The act of the fifteenth session of the legislative assembly, providing for stenographic reporters to be appointed by the d.istrict judges, creating the of-

fice of court reporter, and making appropriation for the payment of his salary, is not repugnant to the constitution, and said reporter is entitled to the compensation fixed by said act.—Gilbert v. Moody, 2 Idaho, 747, 25 Pac. 1092.

Section 254. Oath of Office and Official Bond: Said reporter shall take the oath required to be taken by judicial officers; and give a bond to be approved by the judge of the district court, in the sum of five thousand dollars, conditioned for the faithful discharge of his duties, which bond shall be filed in the office of the secretary of state.

1899, 5th Ses. p. 163, portion of Sec. 2; 1895, 3d Ses. p. 69, amending act

1891, 1st Ses. p. 234, Sec. 2, repealing act 1889, 15th Ses. p. 25.

Section 255. Duties: The said reporter shall correctly report all oral proceedings had in said court and the testimony taken

in all cases tried before said court, but the parties may, with the consent of the judge, waive the reporting by such reporter of any part of the proceedings or testimony.

1899, 5th Ses. p. 163, Sec. 3; 1891, 1st 15th Ses. p. 25.
Ses. p. 234, Sec. 3; repealing act 1889,

Section 256. To File Stenographic Records: The reporter shall file the stenographic records and reports made by him with the clerk of the district court of the county in which such report was taken and trial had.

1899, 5th Ses. p. 163, Sec. 4; 1891, 1st 15th Ses. p. 25.
Ses. p. 234, Sec. 4; repealing act 1889,

Section 257. To Furnish Type Written Copy of Record; Fee: It shall be the duty of each reporter to furnish, on the application of the attorney general, prosecuting attorney, or any party to a suit in which a stenographic record has been made, a type written copy of the record, or any part thereof, for which he shall be entitled to receive in addition to his salary, a fee of fifteen cents per hundred words, to be paid by the party requesting the same and to be taxed as costs in the case against the party finally defeated in the action: *Provided*, When such copy is requested on behalf of the state, or its attorney, or by a defendant or his attorney in a criminal case and where after conviction the defendant shall satisfy the court by affidavit or otherwise, that he is unable by reason of his poverty to pay for such copy, so requested by himself or his attorney, the stenographer shall receive a fee of ten cents per hundred words therefor, to be paid in the same manner as other costs in criminal cases are paid: *Provided*, That he shall not in any criminal case receive more than one hundred and fifty dollars, when the same is to be paid by the county, and when so requested by the defendant or his attorney it shall be the duty of the stenographic reporter to furnish the state or its attorney, a copy of such record, without further compensation therefor. Such copy of the record shall constitute prima facie the minutes of the court and may be used on all motions for new trials, review or appeal, when the minutes of the court may be used.

1899, 5th Ses. p. 163, Sec. 5; 1895, 3d p. 234, Sec. 5.
Ses. p. 69, amending act 1891, 1st Ses.

Section 258. Time for Delivery of Copy: It shall be the duty of the reporter to deliver said copy within thirty days after being requested.

1899, 5th Ses. p. 164, Sec. 6; 1891, 1st Ses. p. 234.

Section 259. Salary and Expenses: He shall receive a salary of one thousand dollars per annum, to be paid in the same manner as the salaries of state officers are paid. There shall be paid, in addition to said salary, to each of the stenographic reporters of the district courts, out of the state treasury, for each term of a district court, held by the judge thereof, for the trial and disposition of causes and the transaction of business under the laws of the state, in other counties than that in which said stenographic reporter re-

sides, his expenses, not exceeding twenty-five dollars for traveling and attending each term.

1899, 5th Ses. p. 163, portion of Sec. 1891, 1st Ses. p. 234, Sec. 2.
2; 1895, 3d Ses. p. 69, amending act of

ABSTRACTORS OF TITLE.

Section 260. Must File Bond: Any person or persons engaging in the business of compiling of abstracts of title to real estate, in the State of Idaho, must first file in the office of the probate judge, of the county in which such business is conducted, a bond to the State of Idaho in the penal sum of ten thousand dollars with not less than three sureties residents of the county conditioned for the payment by such abstractors of any or all damages that may accrue to any party or parties by reason of any error, deficiency or mistake in any abstract or certificate of title made, and issued by such person or persons.

1899, 5th Ses. p. 456, amending act
1899, 5th Ses. p. 314, Sec. 1; 1897, 4th
Ses. p. 92.

Penalty for failure to file bond: See
Penal Code, Sec. 5106.

Bond may be executed by surety
company: Civil Code, Sec. 2323.

An abstractor cannot be deprived of
the right to inspect public records be-
cause he uses the records to prepare

abstracts of titles for other persons for
a compensation.—*Burton v. Tuite*, 78
Mich. 363, 7 L. R. A. 73, 44 N. W. 282.

The use of the records of the county
clerk's office by abstractors and others
are subject to reasonable regulations
by the clerk, where he is responsible
for the care of the records.—*Upton v.*
Catlin, 17 Colo. 546, 17 L. R. A. 282, 31
Pac. 172.

Section 261. Probate Judge to Register Abstractors:
The probate judge shall be provided with a suitable register, for entering and registering the names of all abstractors, who qualify, and receive a certificate, and he shall be entitled to a fee, of two dollars for each and every certificate issued as provided in the next section.

1899, 5th Ses. p. 314, Sec. 2; 1897, 4th Ses. p. 92.

Section 262. Certificate of Probate Judge. Abstracts as Evidence: When any abstractor shall have duly filed his bond as above provided, he shall be entitled to receive a certificate from such probate judge, that said bond has been by him duly approved, and filed for record, which certificate shall be valid so long as such abstractor shall maintain his surety upon the bonds as herein provided for unimpaired, and the possession of such valid certificate at the date of issuance of any abstract shall entitle such abstract of title to real estate, certified to, and issued by such abstractor, to be received in all courts as prima facie evidence of the existence of the record of deeds, mortgages and other instruments, conveyances, or liens affecting the real estate mentioned in such abstract, and that such record is as described in said abstract of title.

1899, 5th Ses. p. 315, Sec. 3; 1897, 4th Ses. p. 92, Sec. 3.

Section 263. Life of Bond; Additional Security, Failure to Furnish: The bond herein provided for may run during the continuance of said person or persons in said abstract

business, not to exceed five years, and the probate judge of the county where the bond herein provided for, may be filed, may, at any time, upon complaint of any owner of real estate in his county, require such abstractor, upon ten days notice, to give additional security upon said bond, or show cause why the same should not be declared invalid, and the certificate thereof recalled, and annulled, and if within such time, the additional security to be approved by said probate judge, be not furnished, and no sufficient reason be shown to the judge why the same should not be required, the said bond shall be declared invalid, and the certificate thereof recalled and cancelled.

1899, 5th Ses. p. 315, Sec. 5; 1897, 4th Ses. p. 93, Sec. 5.

Section 264. Appeal from Decision of Probate Judge: The abstractor or complainant may have an appeal to the district court from such decision of the probate judge by preserving the evidence taken at the hearing, which shall be certified up by such judge, and such appeal shall be summarily decided by the court upon such evidence, and the cost of such appeal, including the furnishing of such evidence, shall be adjudged against the defeated party.

1899, 5th Ses. p. 315, Sec. 6; 1897, 4th Ses. p. 93, Sec. 6.

OTHER OFFICERS.

Section 265. Crier, Baliff and Messenger: The supreme court shall have power to appoint a crier, bailiff and a messenger for each term of court, when such officers are necessary.

1899, 5th Ses. p. 6, Sec. 2; 1891, 1st Ses. p. 11, Sec. 2.

Section 266. Per Diem of Crier, Baliff and Messenger: The crier and bailiff shall receive four dollars per day, each, and the messenger, two dollars per day.

The crier, bailiff and messenger to receive pay only when necessarily engaged in their duties as such officers; said time to be certified to the auditor by one of the justices of the supreme court at the close of each term of court.

1899, 5th Ses. p. 7, portion of Sec. 6; amendment of act 1891, p. 11, Sec. 3.
1893, 2d Ses. p. 64, portion of Sec. 4;

Section 267. Per Diem, How Paid: Said per diem shall be paid quarterly out of the state treasury upon warrants issued by the auditor.

1899, 5th Ses. p. 7, Sec. 7; 1891, 1st Ses. p. 12, Sec. 4.

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 341. Books to be furnished, open to examination.

QUALIFICATIONS.

Section 268. Who Eligible to Office: Every qualified elector shall be eligible to hold any office of this state for which he is an elector, except as otherwise provided by the constitution.

1899, 5th Ses. p. 34, Sec. 5; 1891, 1st Ses. p. 59, Sec. 5.

Qualified elector, who is: Const. Art. VI, Sec. 2; see also Sec. 786 et seq.

Qualifications of legislative officers: Const. Art. III, Sec. 6.

Qualifications of executive officers: Const. Art. IV, Sec. 3.

Qualifications of district judge: Const. Art. V, Sec. 23.

Qualifications of prosecuting attorney: Const. Art. V, Sec. 18.

Under a constitutional provision, similar to the above section, the supreme court of Minnesota in *Taylor v. Sullivan*, 11 L. R. A. 272, 47 N. W. 802, holds that the eligibility to hold the office must exist at the time of the election. And our constitutional provision, Article VI, Section 2, defining qualified electors, would seem to bear out this construction. However, the supreme court of Iowa, in *State v. Van Beek*, 19 L. R. A. 622, 54 N. W. 525, holds

that any person, who can qualify himself to take and hold an office, is eligible to it at the time of election, although he was under some disability on the day of the election; and that the naturalization of a person between the day of election and the day he was required to qualify for office, will remove the disability of alienage. Under the statute of Iowa, there is no express provision of law that an alien is ineligible or incapable of being elected. To the same effect is *Kirkpatrick v. Brownfield* (Ky.), 29 L. R. A. 703, 31 S. W. 137. The ineligibility of a person who received the majority of the votes cast for an office does not entitle the minority candidate to the office, at least when those who voted for the former did not know of his ineligibility.—*State ex rel. Goodell v. McGeary*, 69 Vt. 461, 44 L. R. A. 446, 38 Atl. 165.

Disqualified person holding office, penalty: Penal Code, Sec. 4604.

RESIDENCE OF OFFICERS.

Section 369. Certain Officers to Reside in Boise City:

The following officers must reside at and keep their offices in Boise City:

The governor;
Secretary of state;
State auditor;
State treasurer;
Attorney general;
Superintendent of public instruction, and
Clerk of the supreme court.

1887 R. S. Sec. 325.

Section 270. Must Not Absent Himself from State or District: No state or district officer must absent himself from the state or district for more than thirty days, unless upon business of the state, or with the consent of the governor.

1887 R. S. Sec. 326, amended 1899, 5th Ses. p. 13; 1891, 1st Ses. p. 21.

There seems to be no penalty for violation of this section. The Revised Statutes of 1887, Sec. 431, declaring what events create a vacancy in office provided in subdivision 6 as one of the causes of vacancy, "His absence from the territory * * * without permis-

sion * * * beyond the period allowed by law;" but the act of 1891, 1st Ses. p. 105, Sec. 169, declaring what events create a vacancy, omitted entirely the provisions contained in said subdivision 6 of Sec. 431. The act of 1891 was re-enacted in 1899, 5th Ses. p. 67, under proper title to the act.

NOMINATIONS AND COMMISSIONS OF OFFICERS.

Section 271. Nominations How Made: Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which he is nominated.

1887 R. S. Sec. 335.

Power of governor to nominate:
Const. Art. IV, Sec. 6.

Section 272. Resolution of Concurrence: Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary to the governor.

1887 R. S. Sec. 336.

Section 273. Temporary Appointments by Governor: Whenever for any reason the secretary of state, state auditor, attorney general or superintendent of public instruction are temporarily unable to perform the duties of their respective offices, the governor may appoint a suitable person to perform such duties temporarily as an acting officer, until the incumbent of the office shall be able to resume the performance of his duties or a vacancy occurs in such office. The governor shall require such bonds for persons so appointed as may appear to him necessary for the protection of the state, not exceeding the bonds given by the officer in whose stead he acts. Such acting officer shall be nominated by the incumbent of the office: *Provided*, That when the incumbent is unable or fails to so nominate, the governor may appoint without such nomination.

Nothing in this section contained shall be construed to amend or repeal any laws relating to filling vacancies in state offices.

1899, 5th Ses. p. 21; 1891, 1st Ses. p. 39.

Section 274. Governor Must Commission Certain Officers: The governor must commission:

1. All officers of the militia.
2. All officers appointed by the governor, or by the governor with the advice and consent of the senate.

1887 R. S. Sec. 337.

The governor of the state has no power to revoke a commission once regularly issued to an officer who is

not removable at his pleasure, whether the appointing power be in the governor or elsewhere.—*Ewing v. Thompson*, 43 Pa. St. 372.

Section 275. Commissions. How Issued: The commissions of all officers commissioned by the governor must be issued in the name of the people of this state, and must be signed by the governor and attested by the secretary of state, under the great seal.

1887 R. S. Sec. 338.

Where the governor properly appoints an officer, and issues him a proper commission, the refusal of the secretary of state to countersign it,

and seal it with the great seal, does not affect the validity of the appointment.—*State v. Page*, 20 Mont. 238, 50 Pac. 769.

Section 276. Other Commissions: The commissions of all officers, where no special provision is made by law, must be signed by the presiding officer of the body or by the person making the appointment.

1887 R. S. Sec. 339.

Section 277. Appointment of Deputies, Etc., How Made: The appointment of deputies, clerks, and subordinate officers, when not otherwise provided for, must be made in writing, filed in the office of the appointing power or the office of its clerk.

1887 R. S. Sec. 340.

County officers, deputies: Const.

Art. XVIII Sec. 6; also Sec. 1629 of this Code.

Section 278. Restrictions on Certain Appointments:

The governor, the sheriff of any county, any United States marshal or deputy United States marshal, mayor of a city or other person authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen or other peace officers in this state to preserve the public peace and prevent or quell public disturbance, shall not hereafter appoint as such special deputy sheriff, special constable, marshal, policeman or other peace officer, any person who is not a citizen of the State of Idaho.

1899, 5th Ses. p. 9; 1891, 1st Ses. p. 15, Sec. 1.

OATH OF OFFICE.

Section 279. Form of Oath: Before any officer elected or appointed to fill any office, created by the laws of the State of Idaho, enters upon the duties of his office, he must take and subscribe an oath, to be known as the "official oath," which is as follows:

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution and the laws of this state; that I will faithfully discharge all the duties of the office ofaccording to the best of my ability. So help me God.

1887 R. S. Sec. 350, amended 1899, 5th Ses. p. 234 and 67; 1895, 3d Ses. p. 14;

Compiled Laws 1875, p. 824.

Section 280. Time of Taking Oath: Whenever a different time is not prescribed by law, the oath of office must be taken, subscribed and filed within ten days after the officer has notice of his election or appointment, or before the expiration of fifteen days from the commencement of his term of office, when no such notice has been given.

1887 R. S. Sec. 353.

The refusal or neglect of a person duly elected to an office to file his official oath or bond within the time prescribed by law, creates a vacancy, as soon as the term for which he is declared elected commences, which may be filled by the proper appointing power.—*People v. Taylor*, 57 Cal. 620. On this subject, the supreme court of Washington, in *State ex rel. Lysons v. Ruff*, 4 Wash. 234, 16 L. R. A. 140, 29 Pac. 999, says: "Failure to take the oath of office within the time specified by law does not ipso facto create a vacancy which will prevent the officer from qualifying thereafter, if it is done before any steps are taken to declare the vacancy, although the statute declares that the office shall become vacant upon refusal or neglect to take

the oath within the time prescribed."

This section, which requires the officer elect to qualify within fifteen days from the commencement of his term, does not apply when a contest to the right of the office is pending.—*People v. Potter*, 63 Cal. 127.

Under the Revised Statutes of 1887, Sec. 431, the refusal or neglect to file the official oath or bond within the time specified created a vacancy in office, but the laws of 1891, 1st Ses. p. 105, Sec. 169, re-enacted 1899, 5th Ses. p. 67, declaring what happenings shall constitute a vacancy omits this specific ground, but evidently intended to include it in the seventh subdivision which provides for "A forfeiture of office as provided by any law of this state."

Section 281. Before Whom Taken: Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

1887 R. S. Sec. 354.

Section 282. With Whom Filed: Every oath of office, certified by the officer before whom the same was taken must be filed within the time required by law, except when otherwise specially directed, as follows:

1. The oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;

2. The oath of all officers elected or appointed for any county, district or precinct, in the office of the recorder of their respective counties.

1887 R. S. Sec. 356.

Time required to file oath: Sec. 280.

Section 283. Deputies, Etc., Must Take and File Oath: Deputies, clerks, and subordinate officers must take and file an official oath before entering upon their duties.

1887 R. S. Sec. 357.

Form of oath: Sec. 279.

BONDS OF OFFICERS.

Section 284. Time of Filing Bond: Every official bond must be filed in the proper office within the time prescribed for filing the oath, unless otherwise expressly provided by statute.

1887 R. S. Sec. 390.

Time of filing oath: Sec. 280.

The omission to file within ten days

after election, does not affect its validity.—Dutton v. Kelsey and others, 2 Wend. 615.

Section 285. Approval, When Filed; State Officers: Unless otherwise prescribed by statute, the official bonds of state officers must be approved by the governor, and filed and recorded in the office of the secretary of state.

1887 R. S. Sec. 391; Compiled Laws 1875, p. 808, Sec. 1; 1867, 4th Ses. p. 51.

Secretary to file with auditor: Sec. 104.

Section 286. Approval, Where Filed; County Officers: Unless otherwise prescribed by statute, the official bonds of county and precinct officers must be approved by the board of county commissioners, and filed and recorded in the office of the county recorder, and must be in such penalties as is required by law, or, when not fixed by law, as required by the board.

1887 R. S. Sec. 392; Compiled Laws 1875, p. 808, Sec. 1; 1867, 4th Ses. p. 51.

Clerk of district court to file with county treasurer: Sec. 233.

Auditor and recorder to file with probate judge: Sec. 1741.

A board of supervisors has no jurisdiction to reject an official bond, except for the reasons that it is not in form and substance in compliance with the requirements of the statute, or is not executed by sufficient and responsible sureties; and the supreme court

will review on certiorari and annul an order of a board rejecting a bond for any other than one or more of said reasons.—Miller v. Sacramento County, 25 Cal. 93. In the matter of the approval of the bonds of officers, boards of supervisors exercise judicial functions.—Miller v. Sacramento County, 25 Cal. 93. The failure of a board of officers charged to approve the official bond, does not relieve the sureties thereon from liability, nor can it work a forfeiture of the office; the failure

to approve such bond is not the fault of the officer.—*People v. Scannell*, 7 Cal. 432.

When a bond proper in form and substance is signed and sealed by the obligors, and approved by the proper officer and filed in the office appointed by law, it is both executed and delivered to the people of the state of California.—*Sacramento County v. Bird*, 31 Cal. 66.

Delivery of bond; possession of the obligee, and acquiescence therein, see *Comstock et al. v. Gage*, 91 Ill. 328.

The fact that the official bond of the county treasurer was approved by the county judge, instead of the board of supervisors is no defense in an action against the sureties upon the bond, as the liabilities of the sureties does not depend upon the approval of the bond by the proper officers.—*Mendocino Co. v. Morris*, 32 Cal. 145; *People v. Edwards*, 9 Cal. 286; *People v. Evans*, 29 Cal. 436; *Bartlett et al. v. Board of Education*, 59 Ill. 364.

Where sureties sign an official bond

for \$5000, and the bond is afterwards changed to \$10,000, and is then approved and filed, the first sureties who signed before the change are not liable. The bond they did execute was not delivered, that is to say it was not approved and filed for record. The filing for record may itself constitute the delivery, but the filing to be effectual as a delivery, must be preceded by the approval; delivery is requisite in order to give obligation and effect to a bond whether it is an official bond or bond of any other description. The first four sureties are not liable upon the bond for five thousand dollars because it was not delivered, nor are they liable on the bond for ten thousand dollars because they did not execute it. If, after the principal obligor on an official bond has executed the same, the penal sum is changed and with his knowledge and assent it is then executed by other sureties, and he forwards it for approval and record, he is liable on the bond as approved.—*People v. Kneeland*, 31 Cal. 288.

Section 287. Record of Official Bonds: Official bonds must be recorded in a book kept for that purpose, and entitled "Record of Official Bonds."

1887 R. S. Sec. 393.

Section 288. Approval of Bond to Be Indorsed Thereon: The approval of every official bond must be indorsed thereon and signed by the officer approving the same.

1887 R. S. Sec. 394; *Compiled Laws 1875*, p. 808, Sec. 2; *1867, 4th Ses.* p. 51.

If the bond had been received and acted upon by the county officers as the official bond of the assessor, the sureties would have been estopped from denying their liability on it, notwithstanding the fact that it did not have the approval of any county officer indorsed upon it.—*People v. Kneeland*, 31 Cal. 288.

An approval of an official bond of a justice of the peace, signed by two trustees at the same date, if nothing appears to the contrary, will be presumed to have been done at a meeting of the trustees, and such approval will be a sufficient compliance with the statute, which requires the bond to be approved by the trustees of the township.—*Place v. Taylor*, 22

Ohio St. 317. The official bond of a justice of the peace, de facto, is an obligatory instrument from the time it is left with the clerk for approval if not rejected by him. When the bond was executed by the parties and delivered to the clerk for his approval it became obligatory, unless it was actually disapproved by him. His mere non-action on the subject did not deprive the justice of his power to act, nor did it absolve his sureties from their undertaking that he should act with fidelity.—*Green et al. v. Wardwell et al.* 17 Ill. 278; *Marshall v. Hamilton*, 41 Miss. 229; *Jones v. State*, 7 Mo. 81; *People v. Johr*, 22 Mich. 461; *People v. Edwards*, 9 Cal. 286; *People v. Evans*, 29 Cal. 429; *Mendocino Co. v. Morris*, 32 Cal. 145; see *Section 286* and note, ante.

Section 289. Bond Not to Be Filed Until Approved: No officer with whom any official bond is required to be filed must file such bond until approved.

1887 R. S. Sec. 395; *Compiled Laws 1875*, p. 808, Sec. 3; *1867, 4th Ses.* p. 51.

Section 290. Conditions of Bond: The condition of an official bond must be that the principal will well, truly and faithfully

perform all official duties then required of him by law, and also all such additional duties as may be imposed on him by any law of the state. Such bond must be signed by the principal and at least two sureties to the full penalty of the bond. No person shall be accepted as surety, on such bond, except he shall during the year immediately preceding have been assessed and paid taxes, in his own right, upon property to the amount for which he has become surety.

1887 R. S. Sec. 396.

Miller v. Smith (Idaho), 61 Pac. 824.

PRINCIPAL NOT SIGNING JOINT AND SEVERAL BOND: The omission of an officer to sign his official bond will not release him from any liability arising under the conditions of the bond; nor will such omission release his sureties.

The failure of the officer to sign such bond (it being joint and several) will not invalidate the bond. The surety is estopped from denying any fact recited in the bond, when by such denial he seeks to avoid the bond in an action between the parties to the bond.—State v. McDonald et al. (Idaho), 40 Pac. 312; Kurtz v. Forquer, 94 Cal. 91, 29 Pac. 413.

PRINCIPAL NOT SIGNING JOINT BOND: A bond which in form is a joint obligation of a principal and his sureties, and not joint and several, and signed by the sureties but not by the principal is invalid and not binding upon the sureties.—People v. Hartley, 21 Cal. 585; Sacramento v. Dunlap, 14 Cal. 421. The supreme court of Missouri in Gay v. Murphy, 134 Mo. 98, 56 Am. St. Rep. 500, 34 S. W. 1091, says: "A bond given by a contractor to secure the performance of a contract which recited that it was executed by him as principal and others as sureties contain an implied promise that the principal would sign it before delivery to the obligee and in default of his signature, it is void as to the sureties, though by its terms as well as by statutory provision, it is both joint and several."

CO-SURETIES NOT SIGNING: Where a surety signs an instrument apparently perfect and complete, and

hands it to his principal to be finally delivered to the obligee, only when it shall be executed by certain others as co-sureties, and the principal without complying with the condition, delivers the instrument to the obligee, who has no notice, actual or constructive, of the condition, and takes it in good faith, the surety will be bound.—State v. Blair, 32 Ind. 313; State v. Pepper, 31 Ind. 76. In the official bond of a city treasurer, the name of R. was originally written in the body of the bond as one of the sureties, but erased after the execution of the bond by the other sureties. Held that the liability of the other sureties was not affected by the erasure of R.'s name or his failure to sign the bond.—City of Los Angeles v. Mellus, 59 Cal. 444.

LIABILITY OF SURETIES AFFECTED BY SUBSEQUENT LEGISLATION: Sureties are entitled to stand upon the precise terms of their contracts, and the bond is limited to the duties cast upon the principal and the liabilities of the sureties cannot be extended.—Treweek v. Howard, 105 Cal. 434-444, 39 Pac. 20; Lacoste v. Splivalo, 64 Cal. 35, 30 Pac. 571; San Jose v. Welch, 65 Cal. 358, 4 Pac. 207, and the legislature cannot extend their liability by extending the term of office.—Brown v. Lattimore, 17 Cal. 93.

The general principal to be deducted from the cases is that the legislative alteration of the duties of an officer do not discharge his sureties so long as the duties remain appropriate to the office.—See note to People v. Vilas, 93 Am. Dec. 526; also same note as to what changes in the duties of an officer by the legislature will, and what will not operate to discharge his sureties.

Section 291. Justification of Sureties: The officer whose duty it is to approve official bonds required of state, county, district or precinct officers, must not accept or approve any such bond unless each of the sureties severally justify, before an officer authorized to administer oaths, as follows:

1. On a bond given by a state officer, that such surety is a resident and free-holder or house-holder within this state; and on a bond given by a county, district or precinct officer, that such surety is a resident and free-holder or house-holder within such county or within an adjoining county

2. That such surety is worth the amount for which he becomes surety over and above all his debts and liabilities in unincumbered property situated within this state, exclusive of property exempt from execution and forced sale.

1887 R. S. Sec. 397; Compiled Laws 1875, p. 808, Sec. 7; 1867, 4th Ses. p. 52.

OFFICIAL BOND, APPROVAL OF COMMISSIONERS: It is the duty of the board of county commissioners to approve the bond of the assessor and tax collector *pro forma*, if upon its face it is *prima facie* good. The board may, at any time afterwards, cite the sureties to make a further justification, and, in case it is deemed insufficient, may cite the officer to show cause why his office should not be declared vacant.—*Gorman v. Com-*

missioners of Boise County et al. 1 Idaho, 553.

The fact that a surety did not justify will not release him from liability, if the bond has been accepted.—*State v. McDonald et al.* (Idaho), 40 Pac. 312 (see cases cited).

An official bond is not vitiated because the sureties swear that "they are worth the amount for which they become liable over and above all their just debts and liabilities," instead of saying "over and above all their debts," etc.—*Dorsey v. Smyth*, 28 Cal. 21.

Section 292. Sureties for Less than Penal Sum:

When the penal sum of any bond required to be given amounts to more than one thousand dollars, the sureties may become severally liable for portions of not less than five hundred dollars thereof, making in the aggregate at least two sureties for the whole penal sum. And if any such bond becomes forfeited, an action may be brought thereon against all or any number of the obligors, and judgment entered against them, either jointly or severally, as they may be liable.

The judgment must not be entered against a surety severally bound for a greater sum than that for which he is specially liable by the terms of the bond. Each surety is liable to contribution to his co-sureties in proportion to the amount for which he is liable.

1887 R. S. Sec. 398; Compiled Laws 1875, p. 809, Sec. 8; 1867, 4th Ses. p. 53.

EFFECT OF SETTING SUM OPPOSITE NAME: The sum set opposite the names of the respective parties subscribing a bond joint and several in its terms, is intended to show the sums for which they intend to justify, and to fix their liabilities toward each in the event of the collection of the penalty.

Each and all the defendants are liable for the amount of the bond.—*People v. Slocum et al.* 1 Idaho, 62.

Note.—In this decision, the court contends that to hold that each defendant was liable only for the amount for which he had justified, it would be impossible to say that it was a joint bond. For, if the parties were liable for only the separate and varying sums for which they justified, it is a several obligation only. This decision was rendered by the court in 1866, while the above section was not enacted until 1867, prior to which time there was no statutory provision relating to official bonds. Section 294 provides that all bonds shall be in form joint and several.

The supreme court of South Dakota in *Custer County v. Albien et al.* 7 S. Dak. 487, 64 N. W. 533, held that the judgment of the trial court against each defendant for the amount for which he was liable the same as though the action had been against him separately, was good under Subdivision 3 of Section 4901, Compiled Laws.

And the supreme court of California in *People v. Love*, 25 Cal. 520, held under similar statute to ours that the judgment rendered in an action against the sureties on official bond who signed for different amounts respectively may be entered up against each surety for the amount for which he is liable on the bond. The effect of this statutory provision is discussed in *Pom. Rem. & Rem. Rights*, Section 406. The author there says: "If a contract should be made by a number of promissors in which each bound himself in an amount different from that of all the others, the liability would plainly be several." In the South Dakota case, the court takes pains to say that they are not touching the question whether under their statute the sureties on official bond can limit their

liability thereon to the specific amount for which they signed, as no such ques-

tion is raised.—See also *Heppe v. Johnson*, 73 Cal. 265-270, 14 Pac. 833.

Section 293. Custody of Bonds; Certified Copies Furnished:

Every officer with whom official bonds are filed must carefully keep and preserve the same, and give certified copies thereof to any person demanding the same, upon being paid the same fees as are allowed by law for certified copies of papers in other cases.

1887 R. S. Sec. 399; Compiled Laws 1875, p. 808, Sec. 5; 1867, 4th Ses. p. 51.

Section 294. Form of Bonds: All official bonds must be in form joint and several, and made payable to the State of Idaho in such penalty and with such conditions as required by this subdivision or the law creating or regulating the duties of the office.

1887 R. S. Sec. 400; Compiled Laws 1875, p. 808, Sec. 6; 1867, 4th Ses. p. 52.

FORM OF BOND: An official bond made "to the people of the state of California," is sufficient, though the statute required it to be made to "the state of California." All that is requisite is that there should be a certain obligee, and either of the above names is descriptive of the same sovereignty, and may be indifferently used, as they are in various statutes.—*Tevis v. Randall*, 6 Cal. 632.

A bond in the following form: "Know all men, that we A., as principal, and B., C. & D., as sureties, are bound unto the people in the several sums affixed to our names, viz: B. in the sum of ten thousand dollars, C. in the sum of five thousand dollars, D. in

the sum of three thousand dollars," etc., "for which payment well and truly to be made we, severally bind ourselves, our heirs," etc., and signed and sealed by the obligors, is held to be an instrument embracing several distinct obligations, each of which is a joint obligation of the principal and one surety, and not joint and several.—*People v. Hartley*, 21 Cal. 585.

A bond running thus: "For which sums respectively, unto the said state of California, in the manner and in the proportion hereinbefore set forth, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents," is a joint and several bond.—*People v. Love*, 25 Cal. 520.

Section 295. Force and Effect of Bond: Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein for any and all breaches of the conditions thereof committed during the time such officer continues to discharge any of the duties of or hold the office, and whether such breaches are committed or suffered by the principal officer, his deputy or clerk.

1887 R. S. Sec. 401; Compiled Laws 1875, p. 810, Sec. 9; 1867, 4th Ses. p. 53.

LIABILITY OF SURETIES: In joint and several bonds, each obligor is separately bound. If he would limit his liability, he must impose conditions upon the delivery of the instrument at the time of its execution. A joint bond purporting to be the bond of the principal and sureties, only signed by the sureties, is invalid, and cannot be recovered upon. Otherwise as to undertakings under our statutes, the undertaking is an original and independent contract on the part of the sureties, to which the signature of the principal is not essential.—*City and County of Sacramento et al. v. Dunlap et al.* 14 Cal. 421; *People v. Hartley*, 21 Cal. 585; *People v. Breyfogle*, 17 Cal. 504,

The sureties of a county treasurer are liable for public money received by him as treasurer after the expiration of his term, so long as he remains in possession of the office, and until he delivers it over to his successor.—*People v. Ross*, 38 Cal. 76; *Lynn v. Mayor*, 77 Md. 455, 26 Atl. 1001; *Baker City v. Murphy*, 30 Or. 405, 42 Pac. 133.

The receipts of a county treasurer given to a tax collector for public money, after the expiration of his term, but before he has delivered possession of the office to his successor, are prima facie evidence to charge the sureties on his official bond.—*Placer v. Dickerson*, 45 Cal. 12.

The sureties of a bond of an officer for one term, will not be liable for any act done by him after election to a

second term.—*People v. Aikenhead*, 5 Cal. 106; *Riddel v. School District*, 15 Kan. 170.

DE FACTO OFFICER: Where a state treasurer—re-elected in 1866, accepted a new commission and took a new oath, and continued to discharge the duties of the office, but failed to file a new official bond within the time prescribed by law: Held that he was an officer *de facto* and holding as of the new term: and that the sureties on the new bond afterwards filed were

estopped from denying that he was holding as of the new term *de jure*.—*State of Nevada v. Rhoades*, 6 Nev. 352; *Montieth, Sheriff, et al. v. The Commonwealth*, 15 Grat. 172.

DEPUTY: The sureties on a bond can only be held liable for acts of the deputy during the term of the principal for which the appointment was made, and a breach which occurred during said term must be alleged in the complaint.—*Hubert v. Mendheim*, 64 Cal. 213, 30 Pac. 633.

Section 296. Effect as to Subsequent Laws: Every such bond is in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequently to the execution of such bond, and such condition must be expressed therein.

1887 R. S. Sec. 402; Compiled Laws 1875, p. 810, Sec. 10; 1867, 4th Ses. p. 53.

As to what changes in the duties of an officer by the legislature will, and what will not, operate to discharge his sureties, see note to *People v. Vilas*, 93 Am. Dec. 526.

It is competent for the legislature, in exacting official bonds and prescribing their conditions, to require that they shall be conditioned for the faithful performance of all duties that may

be imposed by subsequent statutes during the officer's continuance in office; and this having been done by a general statute, the sureties on an official bond, conditioned as required by the statute, are liable for their principal's default in reference to additional duties subsequently imposed, unless the statute imposing such duties shows an intention that they shall not be so liable.—*Morrow v. Wood*, 56 Ala. 1.

Section 297. Obligation, for Whose Use and Benefit: Every official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties therein to and for the State of Idaho, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer in his official capacity, and any person so injured or aggrieved may bring suit on such bond, in his own name, without an assignment thereof.

1887 R. S. Sec. 403; Compiled Laws 1875, p. 810, Sec. 11; 1867, 4th Ses. p. 53.

OFFICIAL BONDS, ACTION ON, LIABILITY OF SURETIES: 1. The liability of sureties on an official bond is a statutory liability, and action upon such liability is barred in three years.

2. Where the official bond of a collector obligated him to "well, truly and faithfully perform and discharge all the duties required of him by law as collector aforesaid, and shall pay over to the proper authority all money that shall come into his hands as collector, in pursuance of the statutes in such case made and provided," an action will not lie against the sureties of such officer to recover money wrongfully and illegally paid to him by the board of commissioners after the expiration of his term of office; the receipt of such money by the collector not being an official act for

which the sureties are responsible.—*Ada County v. Ellis (Idaho)*, 48 Pac. 1071.

The sureties of an officer mentioned in this section are liable to any person injured or aggrieved by a wrongful act done by the officer in his official capacity.—*Palmer v. Pettingill et al. (Idaho)*, 55 Pac. 653.

No recovery can be had on a bond purporting to be the joint bond of the principal and sureties, but signed by the latter only.—*Sacramento v. Dunlap*, 14 Cal. 421; *People v. Hartley*, 21 Cal. 585, 82 Am. Dec. 759; but the rule is different where the bond is joint and several.—*People v. Love*, 25 Cal. 520; *Kurtz v. Forquer*, 94 Cal. 93, 29 Pac. 413; *Weir v. Mead*, 101 Cal. 128, 40 Am. St. Rep. 48, 35 Pac. 567.

Where the signature of the sureties to a bond were obtained with the express understanding that it should be signed by certain other persons, and

that without such execution by those or other persons, the bond was not to be delivered, such facts as above stated will not defeat a recovery against the sureties.—*Tidball v. Halley*, 48 Cal. 610.

If a person get possession of an office by usurpation and give a statutory or a legal bond, and a breach of its conditions be committed, he is as much liable on such bond as though he had been duly elected or appointed.—*People v. Slocum et al.* 1 Idaho, 62.

The principal obligor and his sureties are in no condition to question the regularity of the election of the principal, or his responsibility for acts done in an official capacity. The principal had at least the color of office by his appointment, and the bond estops him and his sureties signing it from denying his official character.—*People v. Jenkins*, 17 Cal. 500.

WHO MAY RECOVER: When a contract is made with a party in which another has a beneficial and resulting interest, the party with whom the contract was made has the right to recover though he alleges the injury only to be to the stranger to the instrument or contract.—*People v. Slocum et al.* 1

Idaho, 62; *Custer Co. v. Albien*, 7 S. Dak. 483, 64 N. W. 533.

CONVERSION OF FUNDS: In an action upon an official bond for a breach of duty, an allegation that the defendant unlawfully converted money to his own use does not change the action into one of tort.—*Alvord et al. v. United States*, 1 Idaho, 585.

In an action on an official bond the several items of defalcation need not be separately averred.—*State v. McDonald et al.* (Idaho), 40 Pac. 312 (see cases cited).

CONTRIBUTION BETWEEN SURETIES: The right of action of a surety, who satisfies the debt for contribution from those who are liable with him, rests upon the implied promise raised by law, and not upon subrogation, where the creditor has no security, and the debt creates no lien upon property and is entitled to no priority over other debts.—*Faires v. Cockrill*, 88 Tex. 428, 28 L. R. A. 528, 31 S. W. 190, 639.

In such case the right of action is upon the implied promise arising out of the relation of the parties, and not upon the written contract.—*Id.*

Section 298. Not Void on First Recovery: No such bond is void on the first recovery of a judgment thereon but suit may be afterwards brought from time to time, and judgment recovered thereon by the State of Idaho, or by any person to whom a right of action has accrued against such officer and his sureties, until the whole penalty of the bond is exhausted.

1887 R. S. Sec. 404; Compiled Laws, 1875, p. 810, Sec. 12; 1867, 4th Ses. p. 53.

Section 299. Defective Bond; Sureties Equitably Bound: Whenever an official bond does not contain the substantial matter or conditions required by law, or there are any defects in the approval or filing thereof, it is not void so as to discharge such officer and his sureties; but they are equitably bound to the state, or a party interested, and the state or such party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing, and recover the proper and equitable demand or damages from such officer and the person who intended to become and were included as sureties in such bond.

1887 R. S. Sec. 405; Compiled Laws 1875, p. 810, Sec. 13; 1867, 4th Ses. p. 53.

BONDS NOT FILLING STATUTORY PROVISIONS: A bond not filling the statutory requisite, yet which is lawful in itself and intended to protect the public, is a good bond.—*People v. Slocum et al.* 1 Idaho, 62.

If the bond which the law required of the defendants was not given, if the one given, instead of containing all the conditions which it should have

contained, was less onerous, this is no defense to a breach of those conditions to which the defendants were parties.—*People v. Slocum et al.* 1 Idaho, 62.

A bond, although it "does not contain the substantial matter or conditions required by law" is nevertheless an official bond. The words last quoted do not authorize the courts to change a writing entirely irrelevant into an official bond. The writing as to which the suggestion is to be made

must be a bond, given by an officer or his deputy to secure the discharge of his duties. But being such, it is an official bond. Any defect in its form must appear on the face of the instrument. The action provided for in this section is not a bill to reform the instrument so as to make it conform to the provisions of the Code. It is only necessary that the defect be suggested, and thereupon, if the breach is proved, the court is authorized to render a judgment, precisely as if the bond conformed in every respect to the statutory requirements.—*Hubert v. Mendheim*, 64 Cal. 213, 30 Pac. 633.

The principle is well settled, that official bonds are valid if the condition complies substantially with the requirements of the statutes. And when required by law, bonds are good, as common law obligations, though they do not conform to the statute, if they contain no condition contrary to law. In such case the obligor voluntarily

agrees to make the obligee named a trustee for the persons interested in the due performance of the conditions.—1 *Dillon on Mun. Corporations*, 216.

A bond, payable to the state, given by a public officer for the discharge of public duties, though not taken in the manner or by the persons appointed by law to take it, will be good as a voluntary bond. Being for the benefit of the state, the state will be presumed to have accepted it, when it was delivered to a third person for his use.—*State v. McAlpin*, 4 Ired. 140; *State v. Perkins*, 10 Ired. 333.

Where sureties sign the official bond of their principal, leaving certain blanks to be filled as to amount, date, etc., which they expect him to properly fill, and which he does fill accordingly, they are estopped from claiming that their liability is affected thereby.—*Wright & Co. v. Harris et al.* 31 Iowa, 272.

Section 300. Insufficiency of Sureties; Proceeding:

Whenever it is shown by the affidavit of a credible witness, or otherwise comes to the knowledge of the judge, court, board, officer, or other person whose duty it is to approve the official bond of any officer, that the sureties or any one of them, has since such bond was approved, died, removed from the state, become insolvent, or from any other cause has become incompetent or insufficient surety on such bond, the judge, court, board, officer, or other person may issue a citation to such officer, requiring him, on a day therein named, not less than three nor more than ten days after date, to appear and show cause why such office should not be vacated, which citation must be served and return thereof made as in other cases. If the officer fails to appear and show good cause why such office should not be vacated, on the day named, or fails to give ample additional security, the judge, court, board, officer, or other person must make an order vacating the office, and the same must be filed as provided by law.

1887 R. S. Sec. 406; Compiled Laws Ses. p. 52.
1875, p. 809, portion of Sec. 7; 1867, 4th

Section 301. Form of Additional Bond: The additional bond must be in such penalty as directed by the court, judge, board, officer, or other person, and in all other respects similar to the original bond, and approved by and filed with the same officer as required in case of the approval and filing of the original bond. Every such additional bond so filed and approved is of like force and obligation upon the principal and sureties therein, from the time of its execution, and subjects the officer and his sureties to the same liabilities, suits, and actions as are prescribed respecting the original bonds of officers.

1887 R. S. Sec. 407; Compiled Laws 1875, p. 812, Sec. 20; 1867, 4th Ses. p. 55.

Section 302. Original Bond not Discharged by Addi-

tional Bond: In no case is the original bond discharged or affected when an additional bond has been given, but the same remains of like force and obligation as if such additional bond had not been given.

1887 R. S. Sec. 408; Compiled Laws 1875, p. 812, Sec. 21; 1867, 4th Ses. p. 55.

Section 303. Liability of Officers and Sureties: The officer and his sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds, and such party may bring his action upon either bond, or he may bring separate actions on the bonds respectively, and he may allege the same cause of action, and recover judgment therefor in each suit, and if separate judgments are recovered on the bonds by such party for the same cause of action, he is entitled to have execution issued on such judgments respectively, but he must only collect, by execution or otherwise, the amount actually adjudged to him on the same causes of action in one of the suits, together with the costs of both suits.

1887 R. S. Secs. 409-410; Compiled Laws 1875, p. 812, Secs. 22-23; 1867, 4th Ses. p. 55.

Section 304. Contribution Between Sureties on Two Bonds: Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid, in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

1887 R. S. Sec. 411; Compiled Laws 1875, p. 812, Sec. 24; 1867, 4th Ses. p. 55.

Section 305. Discharge of Sureties: Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond with sufficient sureties in like form, penalty, and conditions, to be approved and filed as the original bond. Upon the filing and approval of the new bond such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the sureties in such new bond is in all respects the same, and may be enforced in like manner as the liability of the sureties in the original bond.

1887 R. S. Sec. 412.

Section 306. Person Appointed to Fill Vacancy to Give Bond: Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as hereinbefore provided.

1887 R. S. Sec. 413; Compiled Laws 1875, p. 813, Sec. 26; 1867, 4th Ses. p. 56.

Section 307. Release of Sureties, How Accomplished: Any surety on the official bond of a city, district, precinct, county or state officer may be relieved from liabilities thereon

afterwards accruing by complying with the provisions of the three sections following.

1887 R. S. Sec. 414; Compiled Laws 1875, p. 813, Sec. 27; 1867, 4th Ses. p. 56.

Section 308. Statement in Writing by Surety Asking Release: Such surety must file with the judge, court, board, officer or other person authorized by law to approve such official bond, a statement in writing setting forth the desire of the surety to be relieved from all liabilities thereon afterwards arising, and the reasons therefor, which statement must be subscribed and verified by the affidavit of the party filing the same.

1887 R. S. Sec. 415; Compiled Laws 1875, p. 813, Sec. 28; 1867, 4th Ses. p. 56.

The proceeding to obtain a valid discharge must be had before the officer or tribunal authorized by law to approve the official bond of such officer,

and not by the tribunal or officer which did in fact, approve the bond.—*People v. Evans*, 29 Cal. 429; to same effect is decision in case of the *People v. Scannell*, 7 Cal. 432.

Section 309. Statement to Be Served on Officer: A copy of the statement must be served on the officer named in such official bond and due return or affidavit of service made thereon as in other cases.

1887 R. S. Sec. 416; Compiled Laws 1875, p. 813, Sec. 29; 1867, 4th Ses. p. 56.

Section 310. When Office may be Declared Vacant: In twenty days after the service, of such notice the judge, court, board, officer, or other person with whom the same is filed, must make an order declaring such office vacant, and releasing such surety from all liability thereafter to arise on such official bond, and such office thereafter is in law vacant, and must be immediately filled by election or appointment, as provided for by law, as in other cases of vacancy of such office, unless such officer has before that time given good and ample surety for the discharge of all his official duties as required originally.

1887 R. S. Sec. 417; Compiled Laws 1875, p. 813, Sec. 30; 1867, 4th Ses. p. 56.

Section 311. Remaining Sureties Liable: The release, discharge, voluntary withdrawal, or incompetency of a surety on any official bond does not affect the bond as to the remaining sureties thereon, or alter or change their liability in any respect.

1887 R. S. Sec. 418.

Section 312. Surety Liable for Default Before Release: No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before the making of the order releasing him from liability, but such legal proceedings may be had therefor in all respects as though no such order had been made.

1887 R. S. Sec. 419; Compiled Laws 1875, p. 813, Sec. 31; 1867, 4th Ses. p. 56.

Section 313. Applies to Receivers, Executors, Etc.: The provisions of this sub-division apply to the bonds of receivers, executors, administrators, and guardians.

1887 R. S. Sec. 420; Compiled Laws 1875, p. 813, Sec. 32; 1867, 4th Ses. p. 56.

A bond executed by a guardian and his sureties will be obligatory and effective if its condition is not strictly according to the requirements of the

statute, but provides, in different and more general terms, for the faithful execution of the guardian's trust.—*Probate Court v. Strong*, 27 Vt. 202.

Section 314. Bonds of Trustees, Etc.; to Whom Payable:

All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the State of Idaho; and upon the order of the court where such action or proceeding is pending may be prosecuted for the benefit of any and all persons interested therein.

1887 R. S. Sec. 421; Compiled Laws 1875, p. 813, Sec. 33; 1867, 4th Ses. p. 56.

Section 315. Securing Lien in Action on Bond:

When an action is commenced in any court in this state for the benefit of the state, to enforce the penalty of or to recover money on an official bond or obligation or any bond or obligation executed in favor of the State of Idaho, or of the people of this state, the attorney or the person prosecuting the action may file with the court in which the action is commenced an affidavit, stating either positively or on information and belief that such bond or obligation was executed by the defendant or one or more of the defendants (designating whom), and made payable to the people of this state, or to the State of Idaho, and that the defendant or defendants have real estate or interest in lands (designating the county or counties in which the same is situated), and that the action is prosecuted for the benefit of the state; and thereupon the clerk receiving such affidavit must certify to the recorder of the county in which such real estate is situated the names of the parties to the action, the name of the court in which the action is pending and the amount claimed in the complaint, with the date of the commencement of the suit.

1887 R. S. Sec. 422; Compiled Laws 1875, p. 814, Sec. 34; 1867, 4th Ses. p. 56.

Section 316. Filing Certificate Creates Lien from Date of Filing:

Upon receiving such certificate the county recorder must indorse upon it the time of its reception, and such certificate must be filed and recorded in the same manner as notices of the pendency of an action affecting real estate; and any judgment recovered in such action is a lien upon all real estate situated in any county in which such certificate is so filed belonging to the defendant, or to one or more of such defendants, for the amount that the owner thereof is or may be liable upon the judgment, from the filing of the certificate; and the fees due the clerk and recorder for the services required are a charge against the county where the suit is brought, to be recovered like other costs.

1887 R. S. Sec. 423; Compiled Laws 1875, p. 814, Sec. 35; 1867, 4th Ses. p. 57. estate: Code Civil Proc. Secs. 3192, 3397.

Pendency of action affecting real

Section 317. Officer may Require Bond from Deputy, Etc.:

Every officer or body appointing a deputy, clerk or

subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof.

1887 R. S. Sec. 424.

PROHIBITIONS APPLICABLE TO CERTAIN OFFICERS.

Section 318. Officers Not to be Interested in Contracts: Members of the legislature, state, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members.

1887 R. S. Sec. 365.

Where the secretary of state makes a contract with a printing company to publish the laws and journals, by the terms of which contract the secretary is to receive a certain portion of the

contract price for the preparation of the copies for the printer, such contract is within the prohibitions of Section 365, Rev. St. (318 of this Code.)—State ex rel. Anderson v. Lewis, Secretary of State (Idaho), 52 Pac. 163.

Section 319. Cannot Purchase at Sales Made by Them: State, county, district, precinct or city officers must not be purchasers at any sale nor vendors at any purchase made by them in their official capacity.

1887 R. S. Sec. 366.

Section 320. Contracts in Violation, Voidable: Every contract made in violation of any of the provisions of the two preceding sections may be avoided at the instance of any party except the officer interested therein.

1887 R. S. Sec. 367.

Section 321. Cannot Purchase Warrants: The state treasurer and auditor, the several county, city, district or precinct officers of this state, their deputies and clerks, are prohibited from purchasing or selling, or in any manner receiving to their own use or benefit, of any person or persons whomsoever, any state, county, or city warrants, script, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof, except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy or clerk, and evidences of the funded indebtedness of such state, county, city, district or corporation.

1887 R. S. Sec. 368; Compiled Laws 1875, p. 667.

Penalty for violation of this Sec.: Penal Code, Sec. 4597.

Section 322. Affidavit, Before Account Allowed: Every officer whose duty it is to audit and allow the accounts of other state, county, district, city or precinct officers, must, before allowing such accounts, require each of such officers to make and file with him an affidavit that he has not violated any of the provisions of this subdivision.

1887 R. S. Sec. 369.

Section 323. Payment Withheld, if Provisions Violated: Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city or district, when the same has been

purchased, sold, received or transferred contrary to any of the provisions of this subdivision.

1887 R. S. Sec. 370; Compiled Laws 1875, p. 668, Sec. 3.

Section 324. Duty of Officer Charged With Disbursement: Every officer charged with the disbursement of public moneys, who is informed by affidavit that any officer whose account is to be settled, audited, or paid by him, has violated any of the provisions of this sub-division, must suspend such settlement or payment, and cause such officer to be prosecuted for such violation.

1887 R. S. Sec. 371; Compiled Laws 1875, p. 668, Sec. 5.

SALARIES WHEN OFFICE IS CONTESTED.

Section 325. Salary Withheld: When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, no warrant can thereafter be drawn or paid for any part of his salary until such proceedings have been finally determined, except when an appeal is taken as provided in section 3816 of the Code of Civil Procedure.

1887 R. S. Sec. 380; exception added by Commission to conform to provisions of act 1899, 5th Ses. p. 65, Sec. 153.

DE FACTO SHERIFF, RIGHT TO OFFICE, MANDAMUS: Though this section forbids the county commissioners to issue warrants for the salary of an office during the pendency of a suit to contest an election thereto, the person who is in possession of the office of

sheriff and performing the duties thereof under a certificate of election issued by the canvassing board is entitled to the fees and expenses of the office; and on application a writ of mandamus will issue, compelling the commissioners to issue a warrant therefor.—In re Havird, 2 Idaho, 652, 24 Pac. 542; affirmed, 141 U. S. 206.

Section 326. Pending of Suit Must be Certified by Clerk: As soon as such proceedings are instituted, the clerk of the court in which they are pending must certify the facts to the officers whose duty it would otherwise be to draw such warrant or pay such salary.

1887 R. S. Sec. 381.

PROCEEDINGS TO COMPEL DELIVERY OF BOOKS AND PAPERS.

Section 327. Officer Entitled to Books and Papers: Every public officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent by virtue of his office.

1887 R. S. Sec. 440.

Section 328. Proceedings to Compel Delivery: If any person, whether a former incumbent or another person, refuse or neglect to deliver to the actual incumbent any such books or papers, such actual incumbent may apply by petition to any court of record sitting in the county where the person so refusing or neglecting resides, or to any judge of the district or probate court residing therein, and the court or officer applied to must proceed in a summary way, after notice to the adverse party, to hear the allegations and proof of the parties, and to order any such books or papers to be delivered to the petitioner.

1887 R. S. Sec. 441.

Refusing to deliver records, penalty: Penal Code, Sec. 4602.

SUMMARY PROCEEDINGS: The actual incumbent of an office may proceed in a summary way, after notice of the petition to the adverse parties, and to make the order applied for, may maintain a summary proceeding to recover the books and papers pertaining to the office, and the court may order their delivery and enforce the order by attachment or warrant. His right to

the office can only be called in question by an information in the nature of a quo warranto against him as incumbent of the office.—Hull v. Superior Court, 63 Cal. 174.

In mandamus for the books and property of the office of sheriff, where it appears conclusively from the conduct of defendant, that there would have been a refusal to comply, if demand had been made, no previous demand is necessary.—Conklin v. Cunningham, 7 N. M. 445, 38 Pac. 170.

Section 329. Enforced by Attachment and Warrant: The execution of the order and the delivery of the books and papers may be enforced by attachment as for a witness, and also, at the request of the petitioner, by a warrant directed to the sheriff or a constable of the county, commanding him to search for such books and papers, and to take and deliver them to the petitioner.

1887 R. S. Sec. 442.

PROCEEDINGS TO COMPEL REPORTS AND REMITTANCES.

Section 330. Subpoena may Issue to Defaulting Officer: In case any county or other officer of this state, who is authorized or directed by law to make certain or any reports to the state auditor, or to the state treasurer, or to the state board of land commisisoners, or to any other official or board of this state, shall fail or neglect to transmit such report, or reports, or funds, by registered mail, or draft, express or money order, within the time provided by law for the sending of such report, or reports, or funds, and in case the said report, or reports, or funds, have not been received by the state auditor, or state treasurer, or any officer or board to whom said report, or reports, or funds, should be made, or delivered, within five days after the last day of the time in which said report, or reports, or funds, are required by law to be transmitted or delivered, then and in that case the state auditor, the state treasurer, or the officer or board to whom such report, or reports, or funds, must be made as required by law, shall forthwith issue a subpoena for any officer or officers so failing or neglecting to transmit the same, requiring such officer or officers to appear forthwith before the state auditor, or state treasurer, or officer or board issuing said subpoena, and produce said report, or reports, or funds aforesaid.

1899, 5th Ses. p. 432.

Section 331. Sheriffs Must Serve Subpœnas: The sheriffs of the several counties are hereby designated as the officers by whom such subpoenas shall be served, and for such services said sheriffs shall be paid the same compensation as is by law provided for similar services in civil cases. The officer so failing or neglecting to transmit such report, or reports, or funds, must pay forthwith to the sheriff aforesaid the compensation for services allowed in this sec-

tion, and shall be liable upon his official bond for the compensation due said sheriff.

1899, 5th Ses. p. 433.

MISCELLANEOUS PROVISIONS.

Section 332. Seals of Executive Officers: Except when otherwise specially provided by law, the seals of office of the various executive officers are those in use by such officers at the time this act takes effect, and a description and impression of such seals must be filed in the office of the secretary of state.

1887 R. S. Sec. 448.

Section 333. Great Seal of the State: That the design drawn and executed by Miss Emma Edwards, of Boise City, and reported and recommended by the select joint committee to devise a great seal for the state with the Latin motto "Esto Perpetua," be adopted, and is hereby made the great seal of the State of Idaho.

DESCRIPTION OF SEAL: On the right of seal is a figure of a miner representing the mining industry, on the left a female figure representing agriculture. In the foreground a sheaf of grain, cornucopias and fir tree, and in the background mountains with a river coursing down their slopes, while in the distance the sun is seen rising

from behind the mountains. The mountains, river and rising sun are inclosed within a shield, at the top of which is a deer's head. Above the deer's head, upon a scroll, are the words "Esto perpetua."

1899, 5th Ses. p. 147; 1891, 1st Ses. p. 215.

Section 334. Oaths, Who may Administer: Every executive and judicial officer may administer and certify oaths.

1887 R. S. Sec. 450.

Oaths, who may administer: Code Civil Proc. Secs. 3034, 4450.

Section 335. Salaries, when Paid: The salaries of all state and district officers, whose salaries are paid from the state treasury, shall be paid quarterly, on the second Monday of January, April, July and October, of each year, out of any money in the treasury not otherwise appropriated.

1899, 5th Ses. p. 142; 1891, 1st Ses. p. 204.

Section 336. Office Hours: Unless otherwise provided by law, every officer must keep his office open for the transaction of business from ten o'clock a. m., until four o'clock p. m., each day, except upon holidays.

1887 R. S. Sec. 452.

Holidays: See Sec. 11.

Section 337. Signature of Officer Acting Ex-Officio: When an officer discharges ex-officio the duties of another office than that to which he is elected or appointed, his official signature and attestation must be in the name of the office the duties of which he discharges.

1887 R. S. Sec. 453.

Section 338. Records Open to Inspection of Citizens: The public records and other matters in the office of any

officer are at all times, during office hours, open to the inspection of any citizen of this state.

1887 R. S. Sec. 454.

An officer having charge of public records is a lawful custodian of said records and is responsible for their safe keeping, and may make and enforce proper regulations consistent with the public right for the use of them. But they are public property for public use, and he has no lawful authority to exclude any of the public from access to and examination and inspection thereof at proper seasons. It follows that he has no right to de-

mand any fee or compensation for the privilege of access to the records, or for examination thereof not made by himself, his clerks, or his deputies. He has no exclusive right to search the records against any other citizen.—*Burton v. Tuite*, 78 Mich. 363, 7 L. R. A. 73-77, 44 N. W. 282; *Upton v. Catlin*, 17 Colo. 546, 17 L. R. A. 282, 31 Pac. 172; *State v. Rachac*, 37 Minn. 372, 35 N. W. 7; *People v. Richards*, 99 N. Y. 620, 1 N. E. 258; *Hanson v. Eichstaedt*, 69 Wis. 538, 35 N. W. 30.

Section 339. When Officers to Report: All officers, boards of officers and commissioners, required by law to make reports to the governor or legislature, must send such reports to the governor twenty days prior to the day on which the legislature is appointed to meet in regular session, who may cause the same, together with his message, to be printed prior to the beginning of each session. They must also when required, make special reports and furnish such information as the governor may require.

1887 R. S. Sec. 160.

Section 340. All Public Officers to Keep Books of Account: It shall be the duty of all state, county, city and precinct officers, who receive fees for services in an official capacity, or who receive public moneys for safe keeping, to at all times keep a public account of the same, consisting of a day book and ledger in which shall be entered all receipts of fees or moneys with brief statement of from whom and on what account the same were received; and a like account of all disbursements of such moneys, to whom and on what account the same were paid.

1901, 6th Ses. p. 208, Sec. 1.

Section 341. Books to Be Furnished, Open to Examination: It shall be the duty of the state and county officers respectively charged with furnishing books and stationery for public use, to furnish suitable books for the purpose to such officers; and such books shall be subject to examination by any citizen at any reasonable time, and such citizen shall be entitled to take memoranda from the same without charges being imposed: *Provided*, If any person or persons desire certified copies of any such account, the officer or person in charge of said books shall be entitled to demand and receive fees for the same as for copies of other public records in his control.

1901, 6th Ses. p. 208, Sec. 2.

CHAPTER XI.

STATE BOARDS.

Section.

STATE BOARD OF EXAMINERS.

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- 383. General reference.

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- 384. Members, jurisdiction.

- 385. General reference.

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- 386. General reference.

STATE BOARD OF EXAMINERS.

Section 342. Name of Board; Its Officers: The board of examiners created by section 18, of article IV, of the constitution shall be styled the "State Board of Examiners." The governor shall be chairman and the secretary of state shall be secretary of the board.

1899, 5th Ses. p. 24, Sec. 1; 1891, 1st Ses. p. 45.

WHO MAY SUE TO DETERMINE ACTION OF BOARD: A citizen and taxpayer beneficially interested in the orders and proceedings of a board created by law or in the doings of a pub-

lic officer has the right to bring a proper suit to determine whether such board or officer has performed his duties as the law requires.—Dunn v. Sharp et al., State Wagon Road Comm'rs (Idaho), 35 Pac. 842; Orr v. State Board of Equalization, 2 Idaho, 923, 28 Pac. 416.

Section 343. Sessions of Board: Regular sessions of the board shall be held on the first and third Tuesdays of every month, and special sessions at any time, if all the members are present.

1899, 5th Ses. p. 24, Sec. 2; 1891, 1st Ses. p. 46.

Section 344. General Duties of Board: It shall be the duty of the board to examine all claims against the state, except salaries and compensation of officers fixed by law, and except fixed appropriations for principal and interest of the public bonded debt, and

except claims against the state already presented to the board and favorably reported by it to the legislature for passage. The board may approve or disapprove any claim or demand against the state, or any item thereof, or may recommend a less amount in payment of the whole, or any item thereof, and a decision of a majority of the members shall stand as the decision of the board.

1899, 5th Ses. p. 24, Sec. 3; 1891, 1st Ses. p. 46.

DUTY TO EXAMINE CLAIMS: It is the duty of the state auditor (board of examiners) to carefully examine all claims against the state presented to him for allowance, and if he is not satisfied that such claim is correct, or if it is not presented within two years from the time it accrued, he may reject it, notwithstanding the certificate of the prison commissioner stating that it is correct, such certificate being merely the evidence in support of such claim.—Crutcher v. Cram, 1 Idaho, 372.

CLAIMS MUST BE PRESENTED TO BOARD: It is claimed by the petitioner that the reason assigned by the state board of land commissioners for the disallowance of the claim was that there was no money remaining in the fund provided by the statute out of which the claim could be paid. This

being so, the allowance of the claim by the board would only be a matter of evidence. The claim would stand as a claim against the state, and as such must pursue the course prescribed by law for all claims against the state, to wit: be first submitted to the state board of examiners, and, if disallowed by them, it can then be presented to this court in the manner prescribed by Sec. 10, Art. 5, Const.—Payne v. State Board of Wagon Road Commissioners (Idaho), 39 Pac. 548.

As to right to present to legislature see Sec. 346.

PETITION TO COMPEL AUDITOR TO ISSUE WARRANT IN FINAL PAYMENT TO CONTRACTORS ON STATE WAGON ROAD: Held: The bill for such final payment must be submitted to state board of examiners.—Winters et al. v. Ramsey, State Auditor (Idaho), 39 Pac. 193.

Section 345. May Examine Witnesses: The board may, whenever it thinks it necessary to the proper settlement of any account, examine the parties, witnesses, and others, on oath or affirmation, touching any matter material to be known in the settlement of such account, and for that purpose may issue writs of summons, and compel witnesses to attend before said board and give evidence in the same manner and by the same means allowed by law to courts of record.

1887 R. S. Sec. 212, rewritten by Commission, changing auditor to board to comply with Art. IV, Sec. 18. of the

constitution.

Compelling attendance of witnesses: Code Civil Proc. Sec. 4454 et seq.

Section 346. Rejected Claims Referred to Legislature: If any person interested is dissatisfied with the decision of the board, on any claim, account, or credit, it is the duty of the board, at the request of such person, to refer the same, with the reasons of its decision, to the legislature.

1887 R. S. Sec. 215, rewritten by Commission, changing auditor to board to

comply with Art. IV, Sec. 18, of constitution.

Section 347. Unpaid Valid Claims Referred to Legislature: In all cases where the law recognizes a claim for money against the state, and no appropriation is made by law to pay the same, the board must audit and settle the same and the auditor must give the claimant a certificate of the amount thereof under his official seal, if demanded, and the board shall report said claim to the legislature with as little delay as possible.

1887 R. S. Sec. 216, rewritten by Commission to conform to provisions of

Art. IV, Sec. 18, of constitution.

Section 348. Liability of Auditor for Paying Rejected Claims:

In case the auditor shall draw a warrant for any claim, or part of a claim, or item thereof, which is disapproved by the board, he shall be liable upon his official bond for the same, if any loss shall accrue to the state therefrom.

1899, 5th Ses. p. 24, Sec. 4; 1891, 1st Ses. p. 46.

Section 349. Board may Make Rules, Etc.: The board may make such rules and regulations for the conduct of its business as it may deem desirable, not inconsistent with law.

1899, 5th Ses. p. 24, Sec. 5; 1891, 1st Ses. p. 46.

STATE BOARD OF MEDICAL EXAMINERS.

Section 350. General Reference: The creation of, and the powers and duties of the state board of medical examiners are prescribed in Title III, Chapter XV, of this Code.

New Sec. by Commission.

BOARD OF EXAMINERS—DENTAL.

Section 351. General Reference: The creation of, and the powers and duties of the board of dental examiners are prescribed in Title III, Chapter XV, of this Code.

New Sec. by Commission.

STATE BOARD OF HORTICULTURAL INSPECTION.

Section 352. General Reference: The creation of, and powers and duties of the state board of horticultural inspection are designated in Title III, Chapter XVIII, of this Code.

New Sec. by Commission.

BOARD OF STATE PRISON COMMISSIONERS.

Section 353. Members of Board: The governor, the secretary of state, and attorney general be and the same are hereby constituted a board of state prison commissioners of which the governor shall be chairman, and said board shall have the control, direction and management of the penitentiary of the state.

1899, 5th Ses. p. 13, portion of Sec. 2:
1891, 1st Ses. p. 22, Sec. 2.

Who to constitute board: Const. Art.
IV, Sec. 18, and Art. X, Sec. 5.

Section 354. General Reference: The powers and duties of the board of state prison commissioners are designated in Title XXIV, Chapter CCXL, of the Penal Code.

New Sec. by Commission.

BOARD OF PARDONS.

Section 355. Meetings: The board of pardons established by section 7, of article IV, of the constitution of the State of Idaho, shall meet at the capitol on the first Wednesday of January, April, July and October of each year.

1899, 5th Ses. p. 10, Sec. 1; 1891, 1st Ses. p. 17, Sec. 1.

Section 356. Officers of Board: The governor shall preside at all meetings, and the secretary of state shall be secretary, and shall keep a full and detailed record of the proceedings of the board.

1899, 5th Ses. p. 10, Sec. 2; 1891, 1st Ses. p. 18, Sec. 2.

Section 357. Application for Pardon, Form and Contents: Applications for pardons, commutations and remittances shall be made to the board by written or printed petition, giving a full history of the offense alleged to have been committed, and the legal proceedings had thereon, together with the reasons for clemency, and proof that due publication, as hereinafter provided, has been made in some newspaper of general circulation in the county wherein the alleged offense was committed, and that a copy of said notice has been served on the district judge, prosecuting attorney, and chairman of the board of county commisisoners of the county wherein the alleged offense was committed or conviction had.

1899, 5th Ses. p. 10, Sec. 3; 1891, 1st Ses. p. 18, Sec. 3.

Section 358. Duties of Board: It shall be the duty of the board, when applications for pardons, commutations, and remittances are duly presented to them, to carefully consider them; and for this end they may make such examination outside the application and accompanying documents as they see fit, and shall, if action favorable to the applicant be decided upon, issue to the applicant a certificate of their action, signed by the chairman and countersigned by the secretary of the board, and also notify the custodian of the body of the applicant, if he be in custody, of their action.

1899, 5th Ses. p. 11, Sec. 4; 1891, 1st Ses. p. 18, Sec. 4.

PARDONING POWER: See note under *Singleton v. State* (Fla.). 34 L. R. A. 251.

PARDON, EFFECT OF: A full pardon of an offense, not only blots out the crime committed but removes all punishments and disabilities resulting from the conviction. When extended to a convict in prison, it relieves him and removes his disabilities, and when granted after his time of imprisonment has expired, it removes all that is left of the consequences of conviction—his disabilities.—*Singleton v. State*, 33 Fla. 297, 34 L. R. A. 251, 21 So. 21; but it does not restore offices forfeited or property interests vested in others in consequence of conviction and judgment.—*Am. & Eng. Enc. of Law*, Vol. 17 (1st Ed.), 327 and note.

CONDITIONAL PARDONS: A pardon on condition that the prisoner "leaves the state within 48 hours never to return" may be lawfully granted by a board of pardons, who has authority under the state constitution to grant pardons on such terms, and under such restrictions as it shall think proper.—*State v. Barnes*, 32 S. C. 14, 6 L. R. A. 743, 10 S. E. 611; *Ex parte Hawkins*, 61 Ark. 321, 30 L. R. A. 736,

33 S. W. 106; see *Constitution of Idaho*, Art. IV, Sec. 7.

FORFEITURE OF PARDON: On forfeiture of a pardon on breach of the conditions, a convict becomes liable to serve that part which he has not already served of the term of imprisonment for which he was sentenced, although the original term has long since expired.—*State v. Barnes*, 32 S. C. 14, 10 S. E. 611, 6 L. R. A. 743. But he cannot be arrested or remanded to suffer his original punishment because of an alleged non-performance of the condition upon the mere order of the governor. He is entitled to a hearing before the court in which he was convicted, or some superior court of jurisdiction and an opportunity to show that he has performed the condition of his pardon, or that he has a legal excuse for not so doing.—*State ex rel. O'Conner v. Wolfer* (Minn.), 19 L. R. A. 783, 54 N. W. 1065; *Contra*, *Ex parte Kennedy*, 135 Mass. 48. How forfeiture enforced, see note to *People v. Cummings*, 14 L. R. A. 288, 50 N. W. 310. He is not entitled to a jury trial as a matter of right, except upon the question whether he is the same person who is convicted, if he pleads he is not.—*O'Conner v. Wolfer* (Minn.), 19 L. R. A. 783, 54 N. W. 1065.

Section 359. Expenses Attending Application: All expenses attending the application for a pardon, commutation or remittance, and the proceedings thereon, shall be borne by the applicant, unless for good cause shown the board shall otherwise direct.

1899, 5th Ses. p. 11, Sec. 6; 1891, 1st Ses. p. 18, Sec. 6.

Section 360. Discharge of Person Pardoned: Upon the receipt of the certificate mentioned in section 358, it shall be the duty of the said custodian forthwith to discharge from custody the person to whom the pardon has been granted.

1899, 5th Ses. p. 11, Sec. 7; 1891, 1st Ses. p. 18, Sec. 7.

Section 361. Remission of Fine or Penalty, Effect: Upon the remission of a fine or penalty by the board it shall be the duty of the secretary of the board forthwith to certify the same to the clerk of the court where said fine or forfeiture was adjudged, who shall file the same in his office, and said proceedings shall constitute a satisfaction of the judgment.

1899, 5th Ses. p. 11, Sec. 8; 1891, 1st Ses. p. 19, Sec. 8.

Section 362. May Administer Oath: Any member of the board shall have authority to administer an oath or affirmation to any person offering to testify upon the hearing of an application, and may issue subpoenas for witnesses.

1899, 5th Ses. p. 11, Sec. 9; 1891, 1st Ses. p. 19, Sec. 9.

Section 363. Governor may Restore Citizenship: The governor shall have power to restore to citizenship any person who has served a term of imprisonment in the state penitentiary, and the time of sentence has expired, on good cause shown, upon application duly made to him under the same rules, regulations, and procedure as are provided for applications for pardons.

1899, 5th Ses. p. 11, Sec. 10; 1891, 1st Ses. p. 19, Sec. 10.

Section 364. Board May Make Rules, Etc.: The board shall have power to make all needful rules and regulations for the conduct of its business not inconsistent with this sub-division or other provisions of law.

1899, 5th Ses. p. 11, Sec. 11; 1891, 1st Ses. p. 19, Sec. 11.

Section 365. Board may Issue Parole: The board of pardons of the Idaho state penitentiary shall have authority under such rules and regulations as the said board may prescribe, to issue a parole to any prisoner except as hereinafter provided, who is now or hereafter may be imprisoned in said state penitentiary: *Provided*, That no convict shall be so paroled who is known to have received previous sentence in any prison for a felony: And *provided further*, That no convict who is serving a time sentence shall be paroled until he has received at least one-third of the full term for which he was sentenced, not reckoning any good time: And *provided further*, That no convict who is serving a life sentence shall be paroled.

1899, 5th Ses. p. 11, Sec. 12; 1897, 4th Further restrictions in Sec. 367, Sen. p. 59.

Section 366. Applications for Parole, How Heard:

In considering applications for parole it shall be unlawful for the state board of pardons to entertain any petition, receive any written communication, or hear any argument from any attorney or other person not connected with said penitentiary, in favor of a conditional pardon of any prisoner, but the said board may, if they deem proper, institute inquiries by correspondence or otherwise, as to the previous history or character of any prisoner: *Provided*, That no prisoner shall be paroled except upon the recommendation of the warden.

1899, 5th Ses. p. 12, Sec. 14; 1897, 4th Ses. p. 60.

Section 367. Grades of Prisoners; Only First Grade to be Paroled:

The said board is hereby authorized and empowered to establish three grades of prisoners, together with a system of marks, and to prescribe rules to regulate such grades and marks; and no prisoner shall be released on parole unless he shall have been for six months preceding a member of the first grade. Prisoners in the second and third grades may be deprived of such privileges as the said board may direct.

1899, 5th Ses. p. 12, Sec. 15; 1897, 4th Ses. p. 60.

Section 368. Effect of Parole: Such convict while on parole shall remain in the legal custody and under control of the board of pardons and subject at any time to be taken back within the inclosure of the said state penitentiary, and full power to retake and reimprison any convict so upon parole is hereby conferred upon said board, whose written order certified by the warden shall be a sufficient warrant for all prisoners named in it to authorize any sheriff, constable, policeman or other officer, to arrest and return to actual imprisonment any conditionally released or paroled prisoner; and it is hereby made the duty of all officers to execute such orders the same as ordinary criminal process.

1899, 5th Ses. p. 12, Sec. 13; 1897, 4th Ses. p. 59.

STATE BOARD OF PUBLIC INSTRUCTION.

Section 369. Members of Board: The superintendent of public instruction, the secretary of state, and the attorney general shall constitute the state board of public instruction, of which the superintendent shall be president. The board shall have power to appoint a secretary.

1899, 5th Ses. p. 85, Sec. 1; 1893, 2d
Ses. p. 187.

Who to constitute board: Const.
Art. IX, Sec. 2.

Section 370. General Reference: The powers and duties of the state board of public instruction are designated in Title V Chapter XXXIV of this Code.

New Sec. by Commission.

LIBRARY EXTENSION AND TRAVELING LIBRARY COMMISSION.

Section 371. Commission, how Composed: The governor shall appoint three persons, who, with the state superintendent of pub-

lic instruction and the president of the state university, shall constitute a state library extension and traveling library commission, of which at least two members shall be women. The first members appointed by the governor shall be appointed for terms of two, three and four years, from the first day of April, 1901, and all subsequent appointments shall be for terms of four years, except appointments to fill vacancies. The commission shall annually elect a chairman and secretary.

1901, 6th Ses. p. 6, Sec. 1.

Secs. 1002 to 1006.

Powers and duties of commission:

LABOR COMMISSION.

Section 372. Commission, Creation of: That there shall be and is hereby created a commission to be composed of two electors of the state, which shall be designated the labor commission, and which shall be charged with the duties and vested with the powers hereinafter enumerated.

1901, 6th Ses. p. 66, Sec. 1.

Section 373. Appointment and Qualifications: The members of said commission shall be appointed by the governor, by and with advice and consent of the senate; and shall hold office for two years and until their successors shall have been appointed and qualified. One of said commissioners shall have been, for not less than six (6) years of his life, an employe, for wages, in some department of industry, in which it is usual to employ a number of persons, under single direction and control, and shall be, at the time of his appointment, affiliated with the labor interest as distinguished from the capitalist or employing interest.

The other of said commissioners shall have been, for not less than six years, an employer of labor, for wages, in some department of industry in which it is usual to employ a number of persons, under single direction and control, and shall be, at the time of his appointment, affiliated with the employing interest, as distinguished from the labor interest. Neither of said commissioners shall be less than twenty-five years of age, and they shall not be members of the same political party. A political party within the meaning of this section, should be held to mean one or more parties supporting one ticket or member of a fusion; neither of them shall hold any other state, county or city office in Idaho, during the term of office for which they shall be appointed.

Each of said commissioners shall take and subscribe an oath, to be endorsed upon his commission, to the effect that he will punctually, honestly and faithfully discharge his duties as such commisisoner.

1901, 6th Ses. p. 66, Sec. 2.

Section 374. Secretary, Seal: Such commission shall have a seal and shall not be required to leave their personal labor or business, except to perform the duties devolving upon them as members of the labor commission.

When necessary, they may appoint a secretary, who shall be a skillful stenographer and typewriter, and who shall receive a salary of

four dollars per day and traveling expenses for every day spent in the discharge of duty under the direction of the commission.

1901, 6th Ses. p. 67, Sec. 3.

Secs. 641 to 654.

Powers and duties of commission:

STATE BOARD OF EQUALIZATION.

Section 375. Members and Officers of Board; Quorum: The state board of equalization shall consist of the governor, secretary of state, attorney general, state auditor, and state treasurer.

The governor shall be chairman, and the state auditor secretary of the board. Any three members, including the chairman and secretary, shall be a quorum for the transaction of business.

1901, 6th Ses. p. 254, Sec. 66.

Art. VII, Sec. 12.

Who to constitute board: Const.

Section 376. General Reference: The powers and duties of the state board of equalization are designated in Title VII, Chapter LIV, of this Code.

New Sec. by Commission.

TRUSTEES OF THE SOLDIERS' HOME.

Section 377. Members, Officers and Powers of Board: The governor, the secretary of state and the attorney general shall be ex-officio members of, and constitute a board of trustees of the soldiers' home. The governor shall be chairman of said board, and the secretary of state, the secretary thereof. The general supervision and the government of the soldiers' home shall be vested in said board of trustees, and a majority of said board shall constitute a quorum to do business. Said board shall have power to prescribe such rules and regulations as may be necessary, touching all matters connected with said home not inconsistent with law.

1899, 5th Ses. p. 191, Sec. 4; 1897, 4th Ses. p. 92, Sec. 4.
Ses. p. 7, Sec. 2, amending act 1893, 2d

Section 378. General Reference: The powers and duties of the board of trustees of the soldiers' home are designated in Title II, Chapter XII, of this Code.

New Sec. by Commission.

BOARD OF TRUSTEES OF CAPITOL, BUILDING AND GROUNDS.

Section 379. Members: The governor, secretary of state and state treasurer shall constitute a board of trustees for the custody and maintenance of the capitol building and grounds.

1887 R. S. Sec. 172, amended 1899, 5th Ses. p. 6; 1891, 1st Ses. p. 10.

Section 380. General Reference: The powers and duties of the board of trustees for the custody and maintenance of the capitol building and grounds are designated in Title II, Chapter XII, of this Code.

New Sec. by Commission,

BOARD OF STATE CANVASSERS.

Section 381. Members: The governor, secretary of state, state auditor, state treasurer and attorney general, or any three of them, shall constitute the board of state canvassers.

1899, 5th Ses. p. 55, portion of Sec. 103.
94; 1891, 1st Ses. p. 89, portion of Sec.

Section 382. General Reference: The powers and duties of the board of state canvassers are designated in Title IV, Chapter XXVI, of this Code.

New Sec. by Commission.

BOARD OF DIRECTORS FOR THE ASYLUMS FOR THE INSANE.

Section 383. General Reference: The manner of creating the board of directors for the asylums for the insane is defined in Article X, Section 6 of the constitution of the State of Idaho and the powers and duties of said board are designated in Title II, Chapter XII, of this Code.

New Sec. by Commission.

STATE BOARD OF LAND COMMISSIONERS.

Section 384. Members; Jurisdiction: The governor, superintendent of public instruction, secretary of state and attorney general shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law.

New Sec. by Commission to conform Who to constitute board: Const.
to Const. Art. IX, Sec. 7. Art. IX, Sec. 7.

Section 385. General Reference: The powers and duties of the state board of land commissioners are designated in Title II, Chapter XIII, of this Code.

New Sec. by Commission.

EDUCATIONAL INSTITUTIONS—BOARDS.

Section 386. General Reference: The manner of creating, and the powers and duties of the regents of the university, the trustees of the Lewiston normal school, the trustees of the Albion normal school and the Academy of Idaho are designated in the chapters relating to said schools in Title V, of this Code.

New Sec. by Commission.

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INSANE ASYLUM.

Section 387. Management and Control of: The Idaho insane asylum located at Blackfoot, is under the management and control of a board of directors, consisting of three persons.

1887 R. S. Sec. 750; compiled from Laws 1885, 13th Ses. p. 66.

Directors, how appointed: Const. Art. X, Sec. 6.

Section 388. Directors; Appointment, Term and Oath: Said board of directors must be nominated and, by and with the advice and consent of the senate, appointed by the governor. Their term of office is two years and until their successors are appointed and qualified. Before entering upon the duties of their office they must each take and subscribe to the official oath required by law. They must elect one of their number president, and another secretary.

1887 R. S. Sec. 751, compiled from Laws 1885, 13th Ses. pp. 65-66, rewritten by Commission to make oath con-

form to act of 1899, 5th Ses. pp. 67 and 234. See also Const. Art. X, Sec. 6.

Section 389. Powers and Duties of Board of Directors: The powers and duties of the board of directors of the insane asylum are as follows:

1. To make by-laws, not inconsistent with the laws of this state, for their own government and the government of the asylum.
2. To hold stated meetings at the asylum for the transaction of

business quarterly, and they may provide in their by-laws for calling special meetings when necessary.

3. To keep a record of their proceedings open at all times to the inspection of any citizen.

4. To elect a medical superintendent, to hold his office during the pleasure of the board.

5. To receive, take and hold property, both real and personal, in trust for the state and for the use and benefit of the asylum.

6. To appoint all officers and employees of the asylum, prescribe their duties, and remove them when in their judgment the good of the public service requires.

7. To visit the asylum once in three months, and keep themselves constantly advised of all items of labor and expense, and the condition of the buildings and the property of the asylum, and they shall have power to make such improvements, as, in their judgment, are actually necessary for the care of the inmates.

The board have discretionary power in case of absolute necessity to remove patients to the nearest possible safe and appropriate place.

8. To cause the accounts of the asylum to be so kept and reported as to show the quality, quantity, cost and vendor of every article purchased.

9. To examine and audit the expenditures for salary of employees and all other expenses incident to the conduct of the asylum, and care and maintenance of the patients, and if approved by them, to certify the same to the auditor.

10. To make regulations and fix the terms for the admission of insane persons who are not indigent or who are not residents of the state. All receipts from such source must be paid into the state treasury.

11. To make diligent inquiry into the departments of labor and expenses, the condition of the asylum and its property.

12. To report to the governor on the 15th day of September in each year, a statement of the receipts and expenditures, the condition of the asylum, the number of patients during the preceding year under treatment, and of such other matters touching the duties of the board as is advisable. To make a biennial report to the governor substantially in the same manner as above, thirty days before each session of the legislature. To report to the state auditor a certified copy of the records of each meeting of the board.

1887 R. S. Sec. 752, compiled from Laws 1885, 13th Ses. pp. 66-67.

Section 390. Payment of Expenses: All itemized bills of purchases and other expenditures made, when examined by the board of directors and found correct, must be certified by the president of the board then sitting, and the same transmitted to the auditor, to be audited and allowed in the same manner as other accounts against the state are audited and allowed.

The auditor must draw his warrant on the treasurer for the amount so audited and allowed, and the said treasurer is hereby authorized

and required to pay the same out of any money in the state treasury, appropriated therefor.

1887 R. S. Sec. 753; 1885, 13th Ses. p. 68, Sec. 19, rewritten by Commission to comply with constitutional provision creating board of examiners, also to read "appropriated therefor" instead

of "not otherwise appropriated." Const. Art. VII, Sec. 13.

Accounts, how audited and allowed: Const. Art. IV, Sec. 18; also Sec. 344 et seq of this Code.

Section 391. Supplies, How Furnished: Upon the receipt of each report from the superintendent, of provisions, fuel, and clothing required as hereinafter provided, the board of directors must advertise in two newspapers published in the state, for four successive weeks, for contracts for furnishing said supplies, or so much thereof as they may deem necessary. The board may reject any and all bids, and no more than the market price must be paid for any article purchased for the asylum. All contracts awarded must be to the lowest bidder upon his giving satisfactory security for the faithful performance of his contract. Nothing in this section prevents the board from purchasing contingent supplies at the lowest market rate until the next semi-annual letting. No director, superintendent or employee must be pecuniarily interested in any contract for supplies furnished for the asylum.

1887 R. S. Sec. 754; 1885, 13th Ses. p. 68, Sec. 18.

Section 392. Compensation of Directors: The directors must each be paid five dollars per day for each day actually employed, which must include the time employed in traveling to and from the asylum and in performing the necessary visitations required by this chapter: *Provided*, That no director shall receive more than one hundred dollars per annum for per diem services. They must be reimbursed for all necessary expenditures incurred in their official duties, and said per diem and expenditures shall be allowed and paid as other accounts against the asylum are allowed and paid.

1887 R. S. Sec. 755, rewritten by Commission to make language more definite.

Accounts, how allowed: See Sec. 344 et seq.

Section 393. Qualifications of Medical Superintendent: The medical superintendent must be a graduate in medicine and must have practiced his profession five years after the date of his diploma.

1887 R. S. Sec. 756; 1885, 13th Ses. p. 67, portion of Sec. 13.

Section 394. Residence of Superintendent: He must reside at the asylum and give his entire time and attention to promote the best interests of the patients.

1887 R. S. Sec. 757, portion of; 1885, 13th Ses. p. 67, portion of Sec. 13.

Section 395. Powers and Duties of Medical Superintendent: He is the chief executive officer of the asylum, with powers and duties as follows:

I. To control the patients, prescribe the treatment, and prescribe and enforce the sanitary regulations of the asylum.

2. With the consent of the board of directors, to fix the number and compensation of, and appoint, control, and remove the attendants and assistants.

3. To prescribe and enforce the performance of the duties of the attendants and assistants.

4. To ascertain and report to the board of directors the amount, character, and quality of provisions, fuel, and clothing required for the six months ending on the first of June and December in each year.

5. With the consent of the board of directors to make any expenditure necessary in the performance of his duties, except for provisions, fuel and clothing.

6. To receive and pay to the state treasurer all moneys found upon insane persons.

7. To keep a daily record of his official acts in the mode prescribed by the by-laws.

8. To make up his annual accounts to the first of July in each year, and as soon thereafter as possible to report a statement thereof, and of the general condition of the asylum, to the board of directors.

9. Such other duties as are prescribed by the board of directors in their by-laws.

1887 R. S. Sec. 758, and portion of 757; 1885, 13th Ses. pp. 67-68.

Section 396. Quarterly Estimate of Expenses: He must estimate quarterly in advance, the probable expenses of the asylum, and submit such estimate to the directors at their stated meetings, for their consideration and approval.

1887 R. S. Sec. 759.

Section 397. Salary of Superintendent, How Fixed: The salary of the medical superintendent must be fixed by the board of directors.

1887 R. S. Sec. 760.

Section 398. Official Bond of Superintendent: He must execute an official bond in the sum of five thousand dollars with two or more sufficient sureties, conditioned that he will faithfully discharge his duties as such officer.

1887 R. S. Sec. 751.

Section 399. Salaries, When Paid: The salaries and compensation fixed by the provisions of this sub-division must be paid quarterly.

1887 R. S. Sec. 762.

Section 400. Approval of Bonds; Where Filed: The official bonds required by the provisions of this sub-division must be approved by the board of directors, and filed in the office of the auditor.

1887 R. S. Sec. 763.

Section 401. Discharge of Patients: Insane persons received in the asylum must upon recovery be discharged therefrom.

1887 R. S. Sec. 764.

POWERS OF OFFICERS OF ASYLUM: The power to discharge an inmate of an insane asylum, otherwise than upon habeas corpus, is vested exclusively in the officers of the asylum, and includes the power to determine whether the patient has recovered, and the authority to discharge persons who have sufficiently recovered, and also

persons who have been improperly committed.—*Kellogg v. Cochran*, 87 Cal. 192, 25 Pac. 677.

EFFECT OF DISCHARGE: The effect of a discharge by the officers of an asylum of an insane inmate, if no guardian has been appointed, is to restore the person discharged to legal capacity to sue.—*Kellogg v. Cochran*, 87 Cal. 192, 25 Pac. 677.

Section 402. Insane Convicts: Insane convicts must be received into the insane asylum, and returned to the state prison again when cured.

1887 R. S. Sec. 765; 1885, 13th Ses. p. 71.

Section 403. Persons Having Contagions or Infectious Disease: No person having any contagious or infectious disease must be admitted into the asylum as a patient.

1887 R. S. Sec. 766; 1885, 13th Ses. p. 68, Sec. 20.

Section 404. Non-Residents, Admission of: No insane person non-resident of this state must be received into the asylum unless he became insane within this state, and the indigent insane of this state must have the preference.

1887 R. S. Sec. 767.

Section 405. Disposition of Money on Discharge or Death: If at the time of the discharge of a person from the asylum, or after the death and burial of any person therein confined, there remains in the custody of the directors or superintendent any moneys paid for the support or maintenance of such person, it must, upon demand, be repaid.

1887 R. S. Sec. 768.

Section 406. Arrest of Insane Person: Whenever it appears by affidavit to the satisfaction of a magistrate of the county that any person within the county is so far disordered in mind as to endanger health, persons, or property, he must issue and deliver to some peace officer for service a warrant, directing that such person be arrested and taken before any judge of a court of record within the county for examination.

1887 R. S. Sec. 769.

Section 407. Witnesses, Two or More: When the person is taken before the judge he must issue subpoenas to two or more witnesses, best acquainted with such insane person, to appear and testify before him at such examination.

1887 R. S. Sec. 770.

Section 408. Physician to be Subpœnaed: The judge must also issue subpoenas for at least one graduate of medicine to appear and attend such examination.

1887 R. S. Sec. 771.

Section 409. Attendance of Witnesses: At the examination the persons subpoenaed must appear and answer all questions pertinent to the matter under investigation.

1887 R. S. Sec. 772.

Section 410. Duty of Physician: The physician must hear such testimony, and must make a personal examination of the alleged insane person.

1887 R. S. Sec. 773.

Section 411. Certificate of Physician: The physician, after hearing the testimony and making the examination, must, if he believes such person to be dangerously insane, make a certificate, under his hand, showing as near as possible:

1. That such person is so far disordered in mind as to endanger health, persons or property;
2. The premonitory symptoms, apparent cause or class of insanity, the duration and condition of the disease;
3. The nativity, age, residence, occupation, and previous habits of the person;
4. The place from whence the person came, and the length of his residence in this state.

1887 R. S. Sec. 774.

Section 412. Form of Certificate: The certificate must be made in the form prescribed by, and, if they can be had, upon blanks furnished by the medical superintendent of the asylum.

1887 R. S. Sec. 775.

Section 413. Commitment to Asylum: The judge, after such examination and certificate made, if he believes the person so far disordered in mind as to endanger health, person, or property, must make an order that he be confined in the insane asylum.

1887 R. S. Sec. 776.

ORDER OF COMMITMENT, EVIDENCE: In an action for damages for malicious prosecution on a charge of insanity resulting in an order of commitment in an insane asylum of

a person who is not insane, the order of commitment is not conclusive evidence against the plaintiff of his insanity at any time, or of probable cause of the prosecution.—*Kellogg v. Cochran*, 87 Cal. 192, 25 Pac. 677.

Section 414. Custody of Insane Person. Notice to Superintendent:

The insane person, together with the order of the judge and certificate of the physician, must be delivered to the sheriff of the county, and by him must be delivered to the agent appointed by the medical superintendent for the conveyance of such insane person to the asylum. Immediately upon receiving such insane person, together with the order and certificate aforesaid, the sheriff must immediately notify the medical superintendent of the asylum by telegraph, if there be telegraph communication accessible between the place where such insane person is and the asylum; if not, then the sheriff shall notify the medical superintendent of the asylum by letter, to be sent not later than one day after the sheriff receives the order and certificate aforesaid, of the facts; and at the

time of delivering the order and certificate to the sheriff the examining physician, or physicians, together with the judge issuing the order, shall also deliver to the sheriff a certificate showing whether, in their judgment, one or more persons will be required to convey such insane person to the asylum; and the sheriff shall inform the medical superintendent of the asylum as to such facts at the time of giving the notice in this section provided.

1887 R. S. Sec. 777, amended 1899, 5th Ses. p. 114; 1895, 3d Ses. p. 17.

Section 415. Conduct and Delivery of Insane to Asylum: Upon receipt of the notice from the sheriff provided for in the preceding section the medical superintendent must at once designate some person among the employees of the asylum, as an agent to transport such insane person to the asylum, and, if it be deemed necessary, he shall designate also from said employees a person to act as the assistant of such agent. Such agent (and assistant if any be appointed) must at once proceed to the county where such insane person is in custody, and demand and receive from the sheriff such insane person, the order of the judge and the certificate of the physician, the agent receipting to the sheriff therefor. The agent must thereupon convey such insane person, together with such order and certificate, to the asylum, and surrender the same to the medical superintendent; and the latter shall at once notify the governor that such insane person has been received at said asylum. The actual and necessary expenses of the agent, his necessary assistant and of the insane person when transferred from the custody of the sheriff to the asylum must be allowed and paid as other claims against the asylum; but the compensation of the agent and necessary assistant shall be only that allowed them while employed in the asylum.

1887 R. S. Sec. 780, amended 1899, 5th Ses. p. 114; 1895, 3d Ses. p. 17.

Section 416. Property of Insane Person; Appointment of Guardian: The judge must inquire into the ability of insane persons committed by him to the asylum to pay for his transportation to the asylum, and the expense of the examination, and bear the actual charges and expenses for the time that such person may remain in the asylum. In case an insane person committed to the asylum under the provisions of this chapter, is possessed of real or personal property sufficient to pay such charges and expenses, the judge must appoint a guardian for such person, who is subject to all the provisions of the general laws of this state in relation to guardians, as far as the same are applicable; and when there is not sufficient money in the hands of the guardian, the judge may order a sale of property of such insane person, or as much thereof as may be necessary, and from the proceeds of such sale the guardian must pay said expenses and must pay the board of directors the sum fixed upon by them each month, quarterly in advance, for the maintenance of such ward; and also out of the proceeds of such sale, or such other funds as he may have belonging to his ward, pay for such clothing as the

medical superintendent may from time to time furnish to such insane person; and he must give a bond with good and sufficient sureties, payable to the board of directors and approved by the judge, for the faithful performance of the duties required of him by this section as long as the property of his insane ward is sufficient for the purpose.

1887 R. S. Sec. 782.

Section 417. Disposition of Money Found on Insane Person: Any moneys found on the person of an insane person at the time of arrest must be certified to by the judge and sent with such person to the asylum, there to be delivered to the medical superintendent, who must deliver the same to the state treasurer. If the sum exceed one hundred dollars, the excess must be applied to the payment of the expenses of such person while in the asylum; if the sum is one hundred dollars or less, it must be kept and delivered to the person when discharged, or applied to the payment of funeral expenses if the person dies at the asylum.

1887 R. S. Sec. 778.

Section 418. Fee of Physician: The physician attending each examination of an insane person is allowed five dollars, to be paid by the county treasurer of the county where the examination was had, on the order of the board of county commissioners.

1887 R. S. Sec. 781.

Section 419. Idiots, Etc., Not Admitted to Asylum: No case of idiocy or imbecility, or simple feebleness of mind, must be maintained at nor must any case of delirium tremens be admitted into the asylum.

1887 R. S. Sec. 779.

SOLDIERS' HOME.

Section 420. Establishment of; Who Admissible: There shall be established in this state an institution under the name of the Soldiers' Home, which institution shall be a home for honorably discharged Union soldiers, sailors and marines, who served in the Union armies during the war of the rebellion, and also for the members of the state national guard disabled while in the line of duty, and veterans of the Mexican war: *Provided*, That before any person is admitted to said home, he shall have been a bona fide resident of this state not less than four months prior to making application for admission thereto.

1899, 5th Ses. p. 190; 1897, 4th Ses. p. 7, amending act 1893, 2d Ses. p. 91.

Section 421. Reservation of Land for Support of: Twenty-five thousand acres of land, granted to the state under the provisions of the act of congress, approved July 3d, 1890, granting to the State of Idaho, one hundred and fifty thousand acres of land for charitable and other purposes, are hereby set apart, and are reserved for the support, and maintenance of the said soldiers' home, out of the first lands selected under said grant and out of the first

proceeds, arising from the sale of said lands, there shall be repaid to the state, the sum of twenty-five thousand dollars, appropriated by the state, together with interest thereon, at the rate of five per cent per annum, from the date of appropriation until paid.

1899, 5th Ses. p. 191; 1893, 2d Ses. p. 91, Sec. 3. Section 2 of the original act of 1893 provided as follows:

of this act, there is hereby appropriated out of any money in the treasury not otherwise appropriated, the sum of twenty-five thousand dollars.

Section 422. Appointment of Superintendent; Bond and Salary: The board of trustees shall appoint a superintendent of said soldiers' home who shall hold office during the pleasure of the board.

The superintendent shall have entire control and management of the home under such rules and regulations as may be prescribed by the board. He shall give a bond in favor of the State of Idaho in the penal sum of four thousand dollars conditioned on the faithful performance of his duties, such bond to be approved by the governor. The superintendent shall receive as compensation for his services such sum as may be fixed by the board of trustees, not to exceed eight hundred dollars per year, and rations.

1899, 5th Ses. p. 191, Sec. 5; 1897, 4th Ses. p. 8, Sec. 3. Trustees: Chap. XI, Sec. 377.

Section 423. Physician for the Home: The board of trustees shall appoint a physician for the home who shall receive a salary to be fixed by the board, not exceeding fifty dollars per month, and who shall hold office during the pleasure of the board.

1899, 5th Ses. p. 191, Sec. 6; 1897, 4th Ses. p. 8, Sec. 4.

Section 424. Site for Home; Donations: Said board of trustees is authorized to select and purchase a site for said institution, consisting of not less than forty acres of land at an expense not exceeding the sum of three thousand dollars; and may receive donations of land for that purpose, and also donations of money and other valuables for the purposes of the home, and may purchase a building or buildings if the same may be found satisfactory to the board. The title to such land must be approved by the attorney general before the same is accepted; and when accepted shall be conveyed to the State of Idaho, and the deed therefor shall be duly recorded in the proper county, and then deposited with the auditor of state, provided that no land or buildings shall be purchased if sufficient for the purpose shall be donated in a location acceptable to the board.

1899, 5th Ses. p. 191, Sec. 7; 1893, 2d Ses. p. 92, Sec. 6.

Section 425. Inspection by Board of Managers of National Home: The said soldiers' home shall at all times be subject to inspection by the board of managers of the national home for disabled volunteer soldiers, under such regulations as said board may adopt and shall also be subject to inspection at any time

by the governor or any officer of his staff designated by him for the purpose of making such inspection.

1899, 5th Ses. p. 192, Sec. 8; 1893, 2d Ses. p. 93, Sec. 8.

Managers of national home for disabled volunteer soldiers: Rev. St. of

U. S. Sec. 4825 et seq.

Extending aid to state homes: Supplement to Rev. St. of U. S. (2d Ed.) p. 617, also p. 698, Par. 6.

Section 426. Disposition of Pensions Drawn by Inmates: In making rules and regulations governing the admission, maintenance and discharge of the inmates of said home, it shall be lawful for said board of trustees to make it a condition for admission to said home, that all soldiers admitted thereto, receiving a pension from the United States exceeding four dollars per month, shall pay over said excess to the board of trustees, and said board of trustees shall, in cases where such soldier has no wife or child living dependent upon him for support, or in circumstances of dependence and want, deposit said excess in the state treasury to the credit of the soldiers' home fund, to be used in defraying the expenses of maintaining said institution, but if there be such wife or child so dependent upon said soldier, then and in that case it shall be the duty of said board to pay over such excess, to such wife or child of such soldier, taking duplicate receipts therefor, one of which receipts shall be delivered to said soldier, and the other filed with the records of the board.

1899, 5th Ses. p. 192, Sec. 9; 1897, 4th Ses. p. 8, Sec. 5.

Section 427. Inmates to Wear Uniform: The inmates of said home shall be clad in the uniform of the Grand Army of the Republic, to be furnished by the state out of funds appropriated for such purpose.

1899, 5th Ses. p. 192, Sec. 10; 1893, 2d Ses. p. 94, Sec. 13.

STATE LIBRARY.

Section 428. Control and Management of: The justices of the supreme court of this state shall have the control and management of the state library, and shall make such rules and regulations respecting the same as they deem best.

1899, 5th Ses. p. 134; 1891, 1st Ses. p. 197.

Section 429. Librarian, Salary; Library, Open When: They shall appoint a librarian, at a salary of \$900 per year, and such librarian must keep the library open every day, except Sundays and legal holidays, while the supreme court and the legislature, or either, may be in session from 9 o'clock a. m. until 9 o'clock p. m., and on all other days, except Sundays and legal holidays, from 9 o'clock a. m. until 5 o'clock p. m.

1899, 5th Ses. p. 376, amending act 2d Ses. p. 79; amending act 1891, 1st
1899, 5th Ses. p. 134, amending act 1893, Ses. p. 197.

Section 430. Management and Disbursement of Funds: The said justices shall have the management of all funds belonging to or appropriated for the use of the state library, and expend and disburse the same for the benefit thereof, as in their

judgment may be best; and upon demand of said justices, or any two of them, the state auditor shall draw his warrants upon the state treasurer for such sum or sums as there may be in the treasurer's hands belonging to or appropriated for the use of said library.

1899, 5th Ses. p. 134; 1891, 1st Ses. p. 197. state: Const. Art. IV, Sec. 18; also Sec. 344 et seq. of this Code.

Allowance of claims against the

Section 431. Bond of Librarian. Sale of Supreme Court Reports: The librarian of the state library shall give a bond, with sufficient sureties, to be approved by one or more of the justices of the supreme court, in the sum of two thousand dollars, conditioned for the faithful performance of his duties and the preservation of the books in said library. He shall have charge of and is authorized to sell the volumes of the supreme court reports now in the possession of the state, and shall monthly turn over to the state treasurer all moneys received from sales thereof, and such moneys shall be placed in the state library fund.

1899, 5th Ses. p. 134; 1891, 1st Ses. p. 198, Sec. 4. does not apply to supreme court reports, new series. See Sec. 99.

The last paragraph of this section

Section 432. Access to Library; Rules Governing: Any person may have access to and may use the books in said library, under such restrictions as the justices of the supreme court may prescribe. Any person who shall violate any rule established for the management of said library may be denied the privileges of said library. Any person who fails to return to the library any book taken therefrom by him, within the time prescribed by the rules of said library, shall be liable to the librarian in three times its value, to be recovered in a civil action; and if such person be an officer or employee of the state, the same shall be withheld from his pay.

1899, 5th Ses. p. 134; 1891, 1st Ses. p. 198. Destroying property of library, penalty: Penal Code, Sec. 4814.

Section 433. Location of Library. Insurance: The state library shall be kept in the capitol building, and the justices of the supreme court shall cause the same to be fully insured against loss or destruction by fire.

1899, 5th Ses. p. 135; 1891, 1st Ses. p. 198.

Section 434. Library Fund: The state library fund consist of all moneys paid to the state treasurer for the use of said fund by attorneys at law upon their admission to practice, as required by the Code of Civil Procedure, and any other moneys and fees required by law to be paid into said fund and the annual sum of one hundred and fifty dollars, which is hereby appropriated annually out of the state treasury to said fund.

1887 R. S. Sec. 807; Compiled Laws 1875, p. 788.

See Code Civil Proc. Sec. 3090. Library fund: Sec. 238.

Section 435. Annual Report of Clerks of Courts: The clerk of the supreme court and the several clerks of the district

courts must annually report to the state treasurer the names of all attorneys admitted or licensed to practice in the courts of which they are clerks respectively.

1887 R. S. Sec. 809; Compiled Laws 1875, p. 788.

CAPITOL BUILDING AND GROUNDS.

Section 436. Under Control of Board of Trustees:

The board of trustees of the capitol building and grounds have control of said capitol building and grounds with authority to receive, collect and receipt for all rents for the use of such parts of the building as may be rented by the state, and fix the amount of such rents, and execute all necessary leases and agreements. All rents so received must be paid into the state treasury to the credit of the general fund. All bills for fuel, lights and water furnished for the capitol building, and all bills for necessary repairs, not exceeding in amount the sum of twelve hundred dollars for any one calendar year, must, when approved and certified by the trustees, be audited and allowed by the state board of examiners, and paid out of any money in the treasury appropriated therefor upon the warrant of the state auditor; but the trustees must not make or erect permanent improvements without special authority of the legislature. They must keep the capitol building insured for not less than fifty thousand dollars, in good, responsible companies that have complied with all the laws of the state relating to fire insurance companies, and the premiums for such insurance must be audited and paid as aforesaid.

1881 R. S. Sec. 173, amended 1889, Trustees: See Sec. 376.
15th Ses. p. 10.

Section 437. Appointment and Duties of Janitor:

The trustees shall have power to appoint a competent person for janitor, at a salary not exceeding seventy-five dollars per month; the janitor to have direct supervision over the whole building; take care of all the offices, halls and rooms, except legislative halls and supreme court chambers during their sessions; and shall attend to the warming of the building, after the adjournment of the legislature.

1887 R. S. Sec. 175.

Section 438. Appointment and Duties of Night

Watchman: The trustees are empowered to employ a competent person as night watchman, at a salary not exceeding sixty dollars per month; the night watchman shall take charge of the building at 8 o'clock p. m. and remain in or around the building until 6 o'clock a. m. It shall be his duty to watch and guard the premises during the night; to visit every office or room occupied during the day, at frequent intervals, and, when necessary, to attend to the steam heater during the night.

1887 R. S. Sec. 176.

OTHER STATE INSTITUTIONS.

Section 439. Designation and General Reference:

Other state institutions are the state prison, University of Idaho, Lew-

iston State Normal School, Albion State Normal School and Academy of Idaho, provisions concerning which will be found under appropriate titles.

New Sec. by Commission.
 State prison: Penal Code, Chap. CCXL.
 University: Political Code, Chap. XXXI.

Lewiston Normal: Political Code, Chap. XXXII.
 Albion Normal: Political Code, Chap. XXXII.
 Academy of Idaho: Chap. XXXII.

CHAPTER XIII.

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STATE BOARD OF LAND COMMISSIONERS.

Section 440. Duties, General Statement of: The state board of land commissioners provided for in section seven, of article nine of the constitution of Idaho, consisting of the governor, superintendent of public instruction, secretary of state and attorney general, shall cause all the public lands now owned by or the title to which may hereafter be vested in the state, to be selected and registered, and thereafter sold or leased, and the funds arising from the sale or leasing thereof (except university lands) shall be invested in the manner provided in this chapter.

1899, 5th Ses. p. 72, Sec. 1; 1893, 2d Ses. p. 139, Sec. 1.

Duty respecting public streams: Sec. 1125 et seq.

Wilful destruction of timber on state

lands a misdemeanor: Penal Code, Sec. 4806.

Cutting and shipping out of the state timber from state lands a felony: Penal Code, Sec. 4807.

Section 441. Meetings, Officers, Record of Proceedings:

The state board of land commissioners shall meet on the second Wednesday of each month. The governor shall be chairman and the attorney general secretary thereof. It shall be the duty of the secretary to keep a careful record of the transactions of the board, in a substantially bound book to be kept for that purpose, which shall be known as the records and proceedings of the state board of land commissioners. He shall countersign all papers, instruments or documents approved, made or directed by the board and bearing the signature of the president.

1899, 5th Ses. p. 77, portion of Sec. 22; 1893, 2d Ses. p. 147, portion of Sec. 20; also 1899, 5th Ses. p. 284, portion of Sec. 4; 1895, 3d Ses. p. 220, portion of

Sec. 4.

Meetings and quorums in relation to arid lands: Sec. 482.

Special meetings: Sec. 480.

Section 442, Rules and Regulations: The state board shall have power to make all needful rules and regulations, not inconsistent with the provisions of this chapter, for carrying these provisions into effect, and shall supply all records, books and papers that may be required for the purposes of this chapter.

1899, 5th Ses. p. 78, Sec. 30; 1893, 2d Ses. p. 149, Sec. 28.

Section 443. Court Proceedings; How Represented:

The secretary of the board shall cause the state to be properly represented in all suits, actions, controversies or claims relating to state lands or timber before the several United States land offices in this

state, before the general land office in Washington, D. C., and before the courts of this state and of the United States; and may employ a competent attorney or attorneys for such purposes.

1899, 5th Ses. p. 78, Sec. 31; 1893, 2d Ses. p. 149, Sec. 29.

Under the provisions of this section the secretary of said board is not authorized to employ an attorney to prosecute the foreclosure of a mort-

gage wherein the state is a party, for the collection of a debt arising out of a loan from the permanent school fund of the state.—*State v. Fitzpatrick* (Idaho), 51 Pac. 112.

SELECTION AND SALE OF LANDS FOR STATE, CHARITABLE, EDUCATIONAL, PENAL AND REFORMATORY INSTITUTIONS.

Section 444. Appointment of Land Selectors: The board shall appoint one or more suitable persons to perfect the selection and location of all lands granted, or to be granted to the state by the United States government; also to select lands in lieu of all lands granted heretofore, or which may be granted, and which may have been disposed of by the general government, or occupied by bona fide settlers. The person or persons appointed as aforesaid, shall each receive a compensation of five dollars per day for all the time actually and necessarily employed in the performance of his duties, and such traveling expenses as may be allowed by the board. The board shall have power to cancel, relinquish, or release the claims of the state to all lands heretofore or hereafter selected which have been occupied by bona fide settlers, when in the opinion of the board the substantial rights of the state will not be injured thereby.

1899, 5th Ses. p. 72, Sec. 2; 1893, 2d Ses. p. 140, Sec. 2.

How selections made: Idaho admission bill, Secs. 4 and 14.

SELECTIONS MUST BE FROM SURVEYED LAND: A state selection of land granted by congress, made before it is surveyed by the United States, is invalid.—*Chant v. Reynolds*, 49 Cal. 213; *Huff v. Doyle*, 50 Cal. 16; *C. P. R. R. Co. v. Robinson*, 49 Cal. 446.

The selection by the state of public land as a portion of the seventy-two sections granted to the state for the use of a seminary of learning, even if approved by the register and receiver of the local land office, does not confer a title on the state until the selection is approved by the secretary of the interior.—*Buhne v. Chism*, 48 Cal. 467; *United States v. Curtner*, 38 Fed. Rep. 1; *Roberts v. Gebhart*, 104 Cal. 67, 37 Pac. 782.

Section 445. Abstracts of Lands Owned by State: The board shall cause suitable abstracts to be made of all lands owned by the state, and entered in suitable and well bound books. Such abstracts shall show in proper columns and pages, the county in which each tract is situated; the section, part of section, township and range; whether timbered or not, mineral or non-mineral, in whole or in part; improved or unimproved, and the value of improvements if any; the character, whether agricultural or grazing; the date of appraisement; the value per acre; the date of sale or lease; the price per acre, if sold; the name of the purchaser or lessee; the amount paid in cash; the amount unpaid; the amount of the unpaid interest or rental; the date of deed from the state; and such other information as may be necessary to show a complete and full abstract of the condition of each tract of land acquired by the state until final payment by the purchaser and the issue of a deed for the land by the state.

1899, 5th Ses. p. 72, Sec. 3; 1893, 2d Ses. p. 140, Sec. 3.

Section 446. Clerical Assistance to Make Abstracts:

For the purpose of making the abstracts provided for in the preceding section, and keeping the records provided for in this chapter, the secretary of the board with approval of the board, shall have power to employ necessary clerical assistance, whose compensation shall be fixed by the board.

1899, 5th Ses. p. 72, Sec. 4; 1893, 2d Ses. p. 140, Sec. 4.

Section 447. Appraisement of Lands:

When the abstracts provided for in section 445 are made, the board may cause the lands therein described to be appraised, and the appraisement may be made by an agent or agents of the board appointed to select lands granted to the state by the United States government, as provided in section 444 or the board may appoint an agent or agents for that purpose. The person or persons selected to make such appraisement shall view each parcel or lot of land and make return under oath to the state board giving in detail the correct and true value of each parcel or lot of land and of the timber thereon, if any; stating the character of the land in whole or in part, whether timbered or not; mineral or non-mineral; agricultural or grazing; arid or not; improved or unimproved; occupied or unoccupied; and the value of the improvements thereon, if any; and the name of the owner of the improvements. In making appraisements no land shall be deemed to be "improved land" and nothing shall be deemed to be "improvements" unless such improvements as may be found by the appraisers were made pursuant to the provisions of a lease or other contract with the state.

1899, 5th Ses. p. 73, Sec. 5; 1893, 2d Ses. p. 141, Sec. 5.

Section 448. State Board Has Control Over Appraisements:

The state board shall have general supervisory power over all matters of appraisement under this chapter and may set aside any appraisement which said board is convinced is unreasonable. All appraisements must be approved by the board before compensation for making the same may be allowed, and no compensation shall be allowed for appraising any land the appraisement of which is set aside by the board.

1899, 5th Ses. p. 73, Sec. 6; 1893, 2d S. p. 141, Sec. 6.

Section 449. Duplicate Abstracts Sent to County Treasurer:

When the public lands or any portion thereof, in any county have been appraised as hereinbefore provided, it shall be the duty of the state board to cause duplicates of the abstracts provided for in section 445 to be prepared and sent forthwith to the county treasurer of such county, and the county treasurer shall preserve the same as a record of his office. In such record said treasurer shall keep an account of all sales of land and timber and of all leases made in his county. Whenever after the transmission of such duplicate abstracts to the county treasurer other lands are appraised in that county a copy of the appraisement in full shall be forwarded to

such treasurer by the state board and shall be entered by said treasurer in said duplicate abstracts.

1899, 5th Ses. p. 74, portion of Sec. 10; 1893, 2d Ses. p. 143, portion of Sec. 10.

Section 450. Sale of Lands; How Conducted: In all counties where the public lands or any portion thereof, have been appraised, the state board shall, when deemed conducive to the best interests of the state, attend in person or by agent, at such times as the said board shall direct, and offer at public auction, at the court house of the county, all or any of the appraised and unsold and unleased lands situated in the county where such public auction is held, to the highest bidder: *Provided*, That no land shall be sold for less than the appraised value thereof, nor for less than ten dollars per acre: *Provided, also*, That not more than one hundred and sixty acres, nor less than a legal sub-division, (except in cases where lands are sub-divided as provided in section 453) be sold to any one individual, company or corporation. At the close of the sale of lands provided for in this section, the person conducting the said sale shall offer, at public auction, the timber on the unsold and unleased lands situated in the county, belonging to the state, to the highest bidder: *Provided*, That no timber shall be sold for less than the appraised value thereof. And *provided, also*, That all rights of ownership in any timber on lands of the state by right or virtue of purchase from the state, shall cease twenty years from and after such purchase. Notice of all sales of land or timber or both, shall be given by publication, in some newspaper published and of general circulation in the county wherein the sale will be held for at least once a week for four weeks next preceding the sale; such notice shall specify the time when, and the place where the sale will be held.

1899, 5th Ses. p. 73, Sec. 7; 1895, 3d Ses. p. 84; amendment of act 1893, 2d Ses. p. 141, Sec. 7.

Lands donated to the state by con-

gress are not subject to sale until they have been surveyed by the United States.—*Rooker v. Johnston*, 49 Cal. 3.

Section 451. Reappraisement of Lands: The state land board shall have the power to order reappraised, any state lands when, in the judgment of the said board, the best interests of the State of Idaho would be served thereby.

1899, 5th Ses. p. 76, portion of Sec. 18; 1897, 4th Ses. p. 45, portion of Sec. 1.

Section 452. Per Diem and Compensation of Certain Officers, Etc.: Persons appointed to appraise land as hereinbefore provided, if other than the regularly appointed selecting agents, shall each be allowed the sum of five dollars per day, and ten cents a mile for each mile necessarily and actually traveled in making appraisements.

The publisher of any advertisement or notice shall be allowed the fees fixed by law for publishing legal notices.

The members of the state board or their agents shall be reimbursed their actual traveling expenses in making sales of lands and timber. County treasurers shall be allowed, as compensation for all services

performed by them in connection with the sale and leasing of lands and timber, one per cent on all funds, arising from such sales or leases, receipted for and transmitted to the state treasurer.

1899, 5th Ses. p. 77, Sec. 21; 1893, 2d Ses. p. 147, Sec. 19.

Section 453. Division of Lands into Town Lots and Sale Thereof:

Any portion of the public lands of this state adjoining the site of any city or town may be sub-divided into lots and sold as herein provided, the state board being satisfied that by a sub-division of any tract into lots the sale of the same could be made for a greater amount than if sold in legal sub-divisions as designated by United States surveys. The state board shall have authority to employ the necessary surveyors to survey such tracts to be sub-divided, into lots of such size as the state board shall determine. A plat of the surveys so made shall be filed in the office of the county recorded of the county wherein the land is situated and a copy thereof, filed in the office of the state board. Tracts so sub-divided shall not be subject to lease, but each lot shall be sold at public auction at such times as the state board may direct. The appraisement and sale of such sub-divided lands shall be in all respects the same as in the case of other lands sold.

1899, 5th Ses. p. 78, Sec. 24; 1893, 2d Ses. p. 148, Sec. 22.

LEASES.

Section 454. Limitation on Amount Rented; Annual Rental:

All lands appraised and unsold shall be subject to lease, at an annual rental of ten per centum on the appraised value thereof. Agricultural lands shall be leased for terms of not more than five years, and in tracts not exceeding 160 acres in extent to any one person, company, or corporation. Grazing lands may be leased in tracts not exceeding 640 acres to any one person, company or corporation. Applications for lease shall be made to the county treasurer of the county wherein the lands desired to be leased are situated, and shall contain an affidavit that the applicant is not the owner of a lease of state lands of more than 160 acres, if agricultural land, and not more than 640 acres, if grazing land, including the amount applied for, and that he desires to lease for his own use and benefit. Applications for lease shall be accompanied by the amount of rental computed from the date of the application to the first day of January next ensuing. Rental after the first payment thereof, as above required, shall be due and payable annually, in advance, on the first day of January of each year.

1899, 5th Ses. p. 75, Sec. 13; 1893, 2d Ses. p. 144, Sec. 13.

Section 455. Proceedings Where Two or More Persons Desire Same Land:

If two or more persons desire to lease the same tract of land the county treasurer shall, after at least five days notice to all parties who have made application to lease the same tract, auction off, at public auction to the person who, in

addition to the ten per cent. on the appraised value will pay the highest premium for the said lease.

1899, 5th Ses. p. 75, Sec. 14; 1893, 2d Ses. p. 145, Sec. 14.

Section 456. Covenants in Lease: Each lease shall contain a covenant that the lessee will promptly pay the rental annually in advance; that no waste shall be committed on the land; and that the premises shall be surrendered at the expiration of the term of the lease, which may be made from one to five years from the date thereof, at the option of the state board, and in case an applicant desires a lease for more than a term of two years, the same may be granted by the said lessee paying in advance a rental for two years, and an annual payment for one year in advance at the expiration of the first year and continue such payments so that the rent shall always be paid two years in advance. And the failure to pay the agreed rental for a period of one month from the time such rental is due, will work a forfeiture of said lease, after notice, as hereinafter provided.

No lease shall be sub-let without the written consent of the state board.

1901, 6th Ses. p. 203.

Section 457. Rental, When Due. First Right to Occupant: All state lands not sold or leased shall be subject to lease as now provided by law, but rental for any lands leased need not be paid in advance but for any year may, at the option of the lessee, be paid at any time of the year for which rental is due not later than the last day of December, of such year. All persons occupying state lands, where such occupancy was commenced pursuant to a sale contract to such persons, shall have a first right to a lease of the tract so occupied at the minimum rental provided by law. *Provided,* That the state land board shall have power to lease state lands that are sub-divided into less than forty acre tracts.

1899, 5th Ses. p. 76, Sec. 18; 1897, 4th Ses. p. 45, Sec. 1, except last proviso.

Section 458. No Rental Charge for Acreage Summer-Fallowed: When in the opinion of the lessee, any lands leased to him required to be summer-fallowed, and he summer-fallows any part or the whole thereof, then for the year in which summer-fallowing is done no rental shall be charged for the acreage so summer-fallowed.

1899, 5th Ses. p. 77, Sec. 19; 1897, 4th Ses. p. 45, Sec. 2.

PAYMENTS FOR PURCHASE AND LEASE.

Section 459. Payments on Purchase, How Made: Payments for lands and timber sold under the provisions of this chapter shall be made as follows: For timber and for lands chiefly valuable for timber, cash in hand; for lands not chiefly valuable for timber, but on which the timber is appraised at more than two and one-half dollars per acre, at least one-half cash in hand; for other lands not less than one-tenth of the purchase price cash in hand.

On all lands whereon there is timber appraised at not to exceed

two and one-half dollars per acre, the appraised value of the timber shall be added to and considered as a part of the value of the land, and such land shall be deemed agricultural or grazing land and when sold shall be paid for as if no timber were growing thereon.

Notes shall be given by the purchaser for the unpaid portion of the purchase price of all land sold to him, and shall be due in ten years from the date of the sale unless the same shall fall due, at the option of the state, because of the failure of the purchaser to perform the covenants of the contract expressed in said note or notes. The rate of interest on all such notes shall be six per centum per annum, and shall be due and payable as follows: On the day of sale the interest on the unpaid portion of such purchase price shall be computed and paid up to the first day of January next ensuing, and thereafter it shall become due and payable annually in advance on the first day of January of each year. *Provided*, That the state board of land commissioners at any time before the expiration of ten years from the date of any sale, may after inspection and favorable report by a member or an agent of said board, extend the time of payment to such purchaser for ten years longer; but before a purchaser can be given such extension, he must have paid all interest due the state, and must accompany his application for such extension with a payment of one-tenth of the principal and one year's interest in advance. Notes given for such extended payments must bear the same rate of interest and be upon the same terms and conditions as those required to be given on purchase of lands.

All notes required to be given by the provisions of this section shall be executed at the same time that the first payment of purchase money is made, and shall be in the form prescribed by the state board.

Any purchaser may make full payment for land purchased, at any time; and after the payment of the amount required to be paid at the time of sale, a purchaser may pay any part of the amount due and such payment shall be endorsed on the note given for the unpaid portion of the purchase price of the land on account of which such partial payment has been made.

1901, 6th Ses. p. 202.

Section 460. Payments, to Whom Made: All payments of principal or interest provided for in the last preceding section shall be made to the county treasurer of the county in which the land purchased is situated, and all notes required to be executed shall be delivered to him by the purchaser or purchasers at the time of making the first payment of principal, at the time of sale.

1899, 5th Ses. p. 74, Sec. 9; 1893, 2d Ses. p. 143, Sec. 9.

Section 461. Payment for Improvements: Any person purchasing land upon which improvements have been made by any other person, and appraised as provided in section 447, shall pay to the county treasurer, in addition to the amount of the principal and

interest required by law to be paid at the time of the sale, the full appraised value of such improvements. The amount thus paid for improvements, shall be paid by the county treasurer to the owner of the improvements unless such owner shall elect within ninety days of such sale to remove the improvements and remove the same, for which purpose he shall have the right to go upon the land. In case the owner elect to remove the improvements and remove the same within said ninety days the county treasurer shall return to the person by whom in was paid, the amount paid for improvements.

1899, 5th Ses. p. 75, Sec. 11; 1893, 2d Ses. p. 144, Sec. 11.

Section 462. Certificates of Sale and Deeds: Upon the sale of lands under the provisions of this chapter upon which full payment has not been made as herein provided, the state board shall issue to the purchaser a certificate of sale showing the land purchased, the amount paid, the amount due, and the time when the principal and interest shall become due. All payments of interest made subsequent to the issue of such certificate of sale shall be endorsed upon such certificate. Upon the filing of countersigned duplicate receipts evidencing full payment of principal and interest for any tract of land sold, the governor shall, under the great seal of the state, issue a deed therefor to the purchaser, or his assignee. All deeds so issued shall be attested by the secretary of state and the secretary of the state board of land commissioners, and a record thereof shall be kept in the office of the state board.

1899, 5th Ses. p. 75, Sec. 12; 1893, 2d Ses. p. 144, Sec. 12.

CERTIFICATE OF PURCHASE: At any time after an authorized survey in the field of land included in a federal grant to the state, an application in due form by a person competent to make it, to purchase said land, may be made and filed in the state land office; but the issuance of a certificate of purchase to the applicant will be subject to the acceptance of the land applied for by the register of the United States land office as a part of such grant.—Oakley v. Stuart, 52 Cal. 521.

A certificate of purchase of land, issued by the register of state lands before the land has been surveyed by the United States is void.—Young v. Shinn, 48 Cal. 26; see Idaho Admission Bill, Sec. 14.

A certificate of location of state school lands, in the hands of the person to whom it is issued, or his ven-

dee, is prima facie evidence of legal title upon which they are entitled to recover in ejectment, as against one who does not show a better title.—Stanway v. Rubio, 51 Cal. 41.

The holder of a state certificate of purchase of public land listed over to the state, can recover in ejectment, as against one, who filed a homestead claim on the same in the United States land office, after the holder of the certificate located it.—Young v. Shinn, 48 Cal. 26.

CONVEYANCE OF SCHOOL LANDS: If a person who has received a certificate of location of school lands, and has paid for the same, conveys all his right and title to the same, and to the school location of the same, the deed conveys all the right which the purchaser from the state has acquired by the certificate of location and the payment of the purchase money.—Stanway v. Rubio, 51 Cal. 41.

Section 463. Payment of Rent and for Improvements on Leased Lands: When payments of rental, or of rental and premium are made, the county treasurer shall issue receipts in duplicate therefor, the "original" to be delivered to the lessee, and the "duplicate" delivered to the county auditor, and by that officer "countersigned," and transmitted to the state board. Immediately after the issue of such receipts the county treasurer shall

forward the application to the state board, and upon the receipt by said board of the application and the "countersigned duplicate receipt," said board shall issue a lease to the applicant.

When application is made to lease lands on which there are improvements the person, other than the owner of the improvements, who is the highest bidder shall deposit with the county treasurer the appraised value of the improvements in addition to the payment of rental, or rental and premium by law required to be made, and the amount so deposited shall be paid to the owner of the improvements, or if such owner so elect he may remove the improvements, in which case the amount deposited shall be returned to the person by whom it was deposited.

1899, 5th Ses. p. 75, Sec. 15; 1893, 2d Ses. p. 145, Sec. 15.

Section 464. Duty of County Treasurer Respecting Payments:

County treasurers of the several counties in which lands or timber have been sold or lands leased, shall use due diligence to collect all money due the state for lands and timber sold, both principal and interest, and for lands leased. Whenever payments of principal or interest for lands sold or of rental for lands leased are made, the county treasurer shall deliver a receipt therefor to the person making the same, a duplicate of which such treasurer shall file with the county auditor to be by such auditor transmitted to the state board after such auditor shall have countersigned the same. Duplicate receipts when received by the state board and entered in the records of the board shall be deposited with the state auditor; and no duplicate receipt whether for principal, interest or rental shall be held valid unless countersigned by said county auditor.

1899, 5th Ses. p. 74, portion of Sec. 10; 1893, 2d Ses. p. 143, portion of Sec. 10.

Section 465. Monthly Statement and Remittance of County Treasurers:

On the last business day of each month county treasurers of counties wherein state lands have been sold or leased shall transmit to the state treasurer all moneys received on account of such sales or leases, and shall at the same time forward to the state auditor a statement of the amount of moneys transmitted. Such statement shall show the class and character of the lands sold or leased and the amount received for each. And any county treasurer withholding any money, the proceeds of the sale or rental of state lands, for a period of five days beyond the time when the same should be transmitted to the state treasurer, shall be liable on his official bond for double the amount withheld. All sums recovered for a violation of this provision shall be paid into and become a part of the general school fund of the state.

1899, 5th Ses. p. 77, Sec. 20; 1893, 2d Ses. p. 146, Sec. 18.

Section 466. State Auditor to Charge County Treasurer:

The state auditor shall charge each of the county treasurers in the state with the amount of money, rental and interest and prin-

cipal separately, received from the sale or lease of lands in their respective counties, as shown by the "duplicate receipts" forwarded by the county auditors of the several counties, and upon presentation of the state treasurer's receipt, shall credit the several county treasurers with the amount of the same.

1899, 5th Ses. p. 78, Sec. 25; 1893, 2d Ses. p. 148, Sec. 23.

INVESTMENT OF SCHOOL FUNDS AND PROCEEDINGS CONNECTED THEREWITH.

Section 467. In What Investment May Be Made:

The state board may, at any meeting, make the necessary orders for the investment or disposal of the funds derived from the sale of public lands of the state (except university lands) then in the state treasury. The proceeds of the sale and rental of public lands of the state (other than university lands), may be invested for and on account of the specific purpose for which the lands were granted, and shall be invested in United States bonds, state bonds, or in first mortgages on improved farms within the state; but no loan secured by mortgage on such improved land, shall exceed one-third of the market value of the land exclusive of improvements, given as security for such loan.

Whenever the state board shall order the investment of any part of the general school fund; or of any permanent fund held for investment, said board shall notify the state auditor of such order, and the state auditor shall draw a warrant for the amount stated in the notice in favor of the chairman and secretary of the board, and the state treasurer shall pay such warrant out of the funds designated. The annual interest on all loans herein provided for shall be seven per cent.

1901, 6th Ses. p. 204.

Restriction on loaning educational fund: Const. Art. IX, Sec. 11.

The state board of land commissioners has power to make legal contracts in loaning the school fund, but cannot bind the state beyond the authority

given them by law.—State v. Fitzpatrick (Idaho), 51 Pac. 112.

The unauthorized acts of said board held not to work a forfeiture or impose a penalty, directly or indirectly on the state.—State v. Fitzpatrick (Idaho), 51 Pac. 112.

Section 468. Board May Accept Deed and Cancel Mortgage:

In all cases where school moneys have been advanced, furnished or loaned to companies, corporations or individuals, by the state board of land commissioners, and a mortgage for the payment of the same has been taken on improved farm lands, as provided by the constitution, and the said money has become due, and remains unpaid, the state board of land commissioners are hereby empowered, and they may in their discretion receive and accept from the said mortgagor a warranty deed to the property mortgaged in full satisfaction of the debt due the state upon said mortgage, and surrender the note to the mortgagor and receipt him in full for the debt due thereon.

1899, 5th Ses. p. 439, Sec. 1.

Constitutional provision: Art. IX, Sec. 11.

Section 469. Board to Hold Land in Trust for School Fund:

It shall be the duty of the board to hold said land

in trust for the school fund of the state; said lands shall be appraised and subject to sale or lease as by law required.

1899, 5th Ses. p. 439, Sec. 2.

Section 470. Money from Sale, Etc., Paid into School Fund: The moneys received from the sale, lease, or rental of any lands as in this chapter provided or by law allowed, shall be paid into the school fund of the state to be disbursed as other school moneys.

1899, 5th Ses. p. 439, Sec. 3.

Section 471. Duty of Attorney General to Foreclose: In any case where a mortgage is held by the state board of land commissioners for any school money due, it shall be the duty of the attorney general, when directed by the board of land commissioners, to file foreclosure proceedings in the proper court and prosecute the same to judgment, and to look after and care for the state's interests in every stage of the proceedings until finally determined.

1899, 5th Ses. p. 439, Sec. 4.

DELINQUENT PURCHASERS AND LESSEES.

Section 472. Notice of Delinquency. Forfeiture of Lease: Any lessee or purchaser, or any assignee of any lessee or purchaser who is in default of rental or interest due the state for a period of one month after such rental or interest is due and payable, shall be notified by the state board by registered letter, of such default, and if within one month after service of such notice, such delinquent lessee, purchaser or assignee has not paid such rental or interest so delinquent, his lease or contract of sale shall be forfeited, and such forfeiture shall be noted on the records of said board: *Provided*, That any lease or contract to purchase may be forfeited by said board at any time, and without notice, upon written consent of the lessee or purchaser filed with said board. In case a notice of delinquency can not be sent to any delinquent lessee, purchaser or assignee, as in this section provided, because the postoffice address of such delinquent is unknown to the said board, then notice of such delinquency may be given by publication in a newspaper published in the county wherein the land is situated; and upon proof of publication in such newspaper being made to the said board, the contract of sale or lease shall be forfeited the same as if service had been made by registered letter. Any person whose lease or contract of sale has been forfeited may, however, redeem such forfeiture at any time before the land has again been sold or leased, by paying all arrears of rental or interest and ten per cent. penalty thereon, together with costs of publication, if publication was made. And the state board is hereby authorized to return to any purchaser the notes which he has given for the purchase price of any lands which have been forfeited, as provided in this section: *Provided*, That all interest is paid on said notes to the date of said forfeiture.

1901, 6th Ses. p. 203.

Section 473. Extension of Time to Purchaser: In all cases where satisfactory evidence is shown to the state board of land commissioners, that any bona fide occupant of land heretofore purchased from the state, is unable to pay to the state the amount of the principal due thereon at the expiration of the ten years' limit provided by law when the sale of such land was made, and it shall further appear that all interest due on said principal has been fully paid, the time within which final payment upon such land may be made is hereby extended for a term of three years from and after the date upon which such final payment became due by the provision of the original sale.

Provided, That all purchasers desiring the benefit of such extension of time for said years, or either of them shall comply with the next section.

1899, 5th Ses. p. 363, Sec. 1.

Section 474. Proceeding to Secure Extension: Every purchaser of state land desirous of procuring an extension of time for making final payments on lands, sold as provided in the preceding section, must present, sixty days (or at some earlier date) before said final payment becomes due, an affidavit substantially as follows: State of Idaho

County of.....

.....being duly sworn, deposes and says that he is at present occupying and in possession of a certain tract of land, described as follows, to-wit: which was sold by the State of Idaho to on the; that said land has been and is now occupied, improved and cultivated in good faith with the intention of securing title therefor from said state; that by reason of this affiant is unable to pay the principal or final payment on said land. Wherefore said affiant asks that the term within which final payment for said land must be made may be extended for the term of three (3) years.

Subscribed and sworn to before me this.....day of.....
19....

.....
County treasurer.

Such affidavit must also be corroborated by similar affidavits of not less than two persons, not purchasers of state lands and bona fide residents in the vicinity of the land described in applicant's affidavit. All such affidavits must be made before the county treasurer of said county in which the land is situated.

County treasurers are hereby empowered to administer oaths for such purposes.

1899, 5th Ses. p. 363, Sec. 2.

Section 475. State Board Shall Grant Extensions, When: Affidavits for extension of time must be presented to the state board of land commissioners, and, if the facts established by

such affidavits are satisfactory to said board the extensions applied for must be granted; and proper entries shall thereupon be made in the records of said board, and notice of such extension be immediately forwarded to the respective county treasurers who must thereupon make the proper entries in the records of their office.

1899, 5th Ses. p. 364, Sec. 3.

GENERAL PROVISIONS RESPECTING PUBLIC LANDS.

Section 476. Assent of Legislature to Act of Congress Donating Land: That the assent of the legislature of the State of Idaho is hereby given to all the provisions of an act of congress, approved July 2d, 1862, entitled, "An act donating public lands to the several states which may provide colleges for the benefit of agriculture and the mechanic arts," and the acts amendatory thereof and supplementary thereto; and, also, an act approved March 2d, 1887, entitled, "An act to establish agricultural experimental stations in connection with the colleges established in the several states under the provisions of an act approved July 2d, 1862, and the act supplemental thereto," and the acts amendatory thereof and supplementary thereto.

1899, 5th Ses. p. 10, Sec. 1; 1891, 1st Ses. p. 16.

Section 477. Only Interest of Purchaser Can be Taxed: Lands sold under the provisions of this chapter shall not be taxed until the right to a deed shall have become absolute, except the value of the interest therein of the purchaser thereof, which interest shall be determined by the amount paid on such land and the amount invested in improvements on such lands.

1899, 5th Ses. p. 78, Sec. 26; 1893, 2d Ses. p. 148, Sec. 24.

STATE LANDS EXEMPT FROM TAXATION: Lands belonging to the

state are exempt from taxation, and no title can be acquired to the same by a tax deed.—*State v. Stevenson* (Idaho), 55 Pac. 886.

Section 478. Reservation of Certain Timber Lands: The state board shall set apart and reserve from sale, such tracts of timber land and the timber thereon, at and near the sources of the rivers of the state, as may in the opinion of the board be required to preserve the forests of the state and prevent a diminution of the flow of the said rivers.

1899, 5th Ses. p. 78, Sec. 27; 1893, 2d Ses. p. 149, Sec. 25.

Section 479. Lands Acquired by Foreclosure and Escheat are School Lands: All lands, title to which is acquired by the state by foreclosure or otherwise, on loans of school funds, and all lands which escheat to the state by virtue of section 2554 of the Civil Code or otherwise, shall be held and treated as school lands, and may be sold and disposed of in the same manner and said land shall be under the charge and control of the state land board.

1899, 5th Ses. p. 443, Secs. 1 and 2.

ARID LANDS.

Section 480. Acceptance of Act of Congress: That the State of Idaho hereby accepts the conditions of section four of an act of congress, entitled, "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30th, 1894, and for other purposes," approved August 18, A. D. 1894, together with all the grants of land to the state under the provisions of the aforesaid act.

1899, 5th Ses. p. 284, Sec. 1 of Chap. 2; 1895, 3d Ses. p. 219, Sec. 1 of Chap. 2.

Section 481. Arid Land Under Control of State Board: The selection, management and disposal of said land shall be vested in the state board of land commissioners, as constituted by section seven of article nine of the constitution of the State of Idaho. Said state board of land commissioners shall be hereinafter designated as the board.

1899, 5th Ses. p. 284, Sec. 2; 1895, 3d Ses. p. 220, Sec. 2.

Section 482. Meeting of Board. Quorum: The board shall meet at least once in each month on the second Wednesday thereof for the transaction of business. The governor shall be president of the board, and it shall be his duty to sign all contracts, papers or documents that shall be approved, made or directed by the board. Any three of the board shall constitute a quorum for the transaction of any and all business; and, in the absence of the governor, one of the other members may act as president pro tempore and may preside at such meeting.

1899, 5th Ses. p. 284, Sec. 3; 1895, 3d Ses. p. 220, Sec. 3.

Section 483. Special Meetings: The president shall have power to call together a special meeting, if in his judgment, public good requires the same to be done, for any purposes contemplated in this chapter; and such call may be either a personal or written notice. The object of such meeting shall be made a matter of record by the secretary.

1899, 5th Ses. p. 284, portion of Sec. 4; 1895, 3d Ses. p. 220, portion of Sec. 4.

Section 484. Office in Capitol Building. Maps: The board shall have an office in the capitol building in a room set apart by the capitol commission. Said office shall be in charge of the secretary. He shall have the custody of the records of the board; and shall receive and file all proposals for the construction of irrigation works to reclaim lands selected under the provisions of this sub-division; keep for public inspection maps or plats, on a scale of two inches to the mile, of all lands selected; receive entries of settlers on these lands, and hear or receive the final proof of their reclamation; and do any and all work required by the board in carrying out the provisions of this sub-division. He shall have authority to administer oaths whenever necessary in the performance of his duties as secretary of the board.

1899, 5th Ses. p. 285, Sec. 5; 1895, 3d Ses. p. 220, Sec. 5.

Section 485. Selection of Land, Proceedings: Any person or persons, company, association or corporation constructing, having constructed or desiring to construct, ditches, canals or other irrigation works to reclaim land under the provisions of this sub-division, shall file with the board a request for the selection, on behalf of the state by the board, of the land to be reclaimed, designating said land by legal sub-divisions. This request shall be accompanied by a proposal to construct the ditch, canal or other irrigation works necessary for the complete reclamation of the land asked to be selected. The proposal shall be prepared in accordance with the rules of the board and with the regulations of the department of the interior; and shall be accompanied by the certificate of the state engineer that application for permit to appropriate water has been filed in his office, together with the state engineer's report thereon. It shall state the source of water supply, the location and dimensions of the proposed works, the estimated cost thereof, the price and terms per acre at which perpetual water rights will be sold to settlers on the land to be reclaimed, said perpetual rights to embrace a proportionate interest in the canal or other irrigation works, together with all the rights and franchises attached thereto. In the case of incorporated companies it shall state the name of the company, the purpose of its incorporation, the names and places of residence of its directors and officers, the amount of its authorized and of its paid up capital. If the applicant is not an incorporated company, the proposal shall set forth the name or names of the party or parties and such other facts as will enable the board to determine his or their financial ability to carry out the proposed undertaking.

1899, 5th Ses. p. 285, Sec. 6; 1895, 3d Ses. p. 221, Sec. 6.

See circular of department of the interior issued April 18, 1898, entitled

"Regulations Concerning the Selection of Desert Lands by Certain States Under the Act of Congress, Approved August 18, 1894."

Section 486. Certified Check Must be Deposited by Applicant: A certified check for a sum not less than two hundred and fifty dollars, nor more than two thousand five hundred dollars, as may be determined by the rules of the board, shall accompany each request and proposal, the same to be held as a guarantee of the execution of the contract with the state, in accordance with its terms, by the party submitting such proposal, in case of the approval of the same and the selection of the land by the board, and to be forfeited to the state in case of failure of said parties to enter into a contract with the state in accordance with the provisions of this sub-division.

1899, 5th Ses. p. 285, Sec. 7; 1895, 3d Ses. p. 221, Sec. 7.

Section 487. Application for Permit to Appropriate Water: The person or persons, company, association or corporation making application to the board for the selection of lands by the state, shall at the time of making application file with the state engineer an application for a permit to appropriate water for the reclamation of the lands described in the request to the

board. This application for a permit shall be of a form prescribed by the state engineer, and shall be accompanied by two copies of a map of the land to be selected, and it shall show accurately the location and dimensions of the proposed irrigation works. The maps of the lands and proposed irrigation works shall be prepared in accordance with the regulations of the state engineer's office and the rules of the department of the interior.

1899, 5th Ses. p. 286, Sec. 8; 1893, 3d Ses. p. 222, Sec. 8.

Section 488. Duty of State Engineer as to Application for Land: Immediately upon the receipt of any request and proposal, as designated in section 485, it shall be the duty of the secretary to examine the same and ascertain if it complies with the rules of the board and the regulations of the department of the interior. If it does not, it is to be returned for correction; but, if it does so comply, it shall be submitted to the state engineer, who shall examine the same and make a written report to the board, stating whether or not the proposed works are feasible; whether the proposed diversion of the public waters of the state will prove beneficial to the public interest; whether there is sufficient unappropriated water in the source of supply; whether or not a permit to divert and appropriate water through the proposed works has been approved by him; whether the capacity of the proposed works is adequate to reclaim the land described; whether or not the proposed cost of construction is reasonable; and whether or not the maps filed in his office comply with the requirements of said office and the regulations of the department of the interior; also whether or not the lands proposed to be irrigated are desert in character and such as may properly be set apart under the provisions of the aforesaid act of congress and the rules and regulations of the department of the interior thereunder. Whenever the state engineer shall be unable, from an examination of the maps and field notes submitted for his examination, to determine whether or not the proposed irrigation works are feasible and adequate, whether or not the proposed cost of construction is reasonable, or whether or not the proposed diversion of the public waters is beneficial to public interest, and whether or not the lands proposed to be irrigated are of such a character as to come under the provisions of the aforesaid act of congress, it shall be his duty to make, or cause to be made by some qualified assistant, such survey or examination as will enable him to report intelligently thereon to the board.

1899, 5th Ses. p. 286, Sec. 9; 1895, 3d Ses. p. 222, Sec. 9.

Section 489. Action of Board on Application: On receipt of the report of the state engineer the secretary shall place the request and proposal with the engineer's report thereon before the board for its consideration. In case of approval the board shall instruct the secretary to file in the local land office a request for the withdrawal of the land described in said proposal. No request on which the state engineer has reported adversely, either as to the water supply, the feasibility of the construction, the cost or capacity of the

works, or as to the character of the lands sought to be irrigated, shall be approved by the board.

1899, 5th Ses. p. 286, Sec. 10; 1895, 3d Ses. p. 223, Sec. 10.

Section 490. Time to Make Satisfactory Proposal after Rejection:

In case the state engineer shall report adversely upon the proposed irrigation works, or where requests and proposals are not approved by the board, the secretary shall notify the parties making such proposal of such action and the reasons therefor. The parties so notified shall have sixty days in which to submit a satisfactory proposal; but the board may, at its discretion, extend the time to six months.

1899, 5th Ses. p. 286, Sec. 11; 1895, 3d Ses. p. 223, Sec. 11.

Section 491. Contract of Board. Bond of Contractor:

Upon the withdrawal of the land by the department of the interior, it shall be the duty of the board to enter into a contract with the parties submitting the proposal, which contract shall contain complete specifications of the location, dimensions, character and estimated cost of the proposed ditch, canal or other irrigation works; the price and terms per acre at which such works and perpetual water rights shall be sold to settlers; and the price and terms upon which the state is to dispose of the lands to settlers. This contract shall not be entered into on the part of the state until the withdrawal of these lands by the department of the interior and the filing of a satisfactory bond on the part of the proposed contractor for irrigation works, which bond shall be in a penal sum equal to five per cent. of the estimated cost of the works, and shall be conditioned for the faithful performance of the provisions of the contract with the state.

1899, 5th Ses. p. 287, Sec. 12; 1895, 3d Ses. p. 223, Sec. 12.

Section 492. Limitations of Time in Contract: No contract shall be made by the board which requires a greater time than five years for the construction of the works, and all contracts shall state that the work shall begin within six months from date of contract, that at least one-tenth of the construction work shall be completed within two years from the date of said contract, that construction shall be prosecuted diligently and continuously to completion, and that a cessation of work under a contract with the state for a period of six months after the second year, without the sanction of the board, will forfeit to the state all rights under said contract.

1899, 5th Ses. p. 287, Sec. 13; 1895, 3d Ses. p. 224, Sec. 13.

Section 493. Forfeiture of Contract, Effect of:

Upon the failure of any parties, having contracts with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, to the satisfaction of the state engineer, it shall be the duty of the secretary to give such parties written notice of such failure; and, if after a period of sixty days from the sending of such

notice they shall have failed to proceed with the work or to conform to the specifications of their contract with the state, the bond and contract of such parties and all works constructed thereunder shall be at once and thereby forfeited to the state; and it shall be the duty of the board at once so to declare and to give notice once each week, for a period of four weeks, in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner and for a like period, of the forfeiture of said contract, and that upon a fixed day proposals will be received at the office of the board in the capitol at Boise City for the purchase of the incompleated works and for the completion of said contract, the time for receiving said bids to be at least sixty days subsequent to the issuing of the last notice of forfeiture. The money received by the board from the sale of partially completed works under the provisions of this section, shall first be applied to the expenses incurred by the state in their forfeiture and disposal, and to satisfying the bond; and the surplus, if any exists, shall be paid to the original contractors with the state.

1899, 5th Ses. p. 287, Sec. 14; 1895, 3d Ses. p. 224, Sec. 14.

Section 494. No Liability Attaches to State: Nothing in this sub-division shall be construed as authorizing the board to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state.

1899, 5th Ses. p. 288, Sec. 15; 1895, 3d Ses. p. 225, Sec. 15.

Section 495. Notice that Land is Open to Settlement: Immediately upon the withdrawal of any land for the state by the department of the interior, and the inauguration of work by the contractor, it shall be the duty of the board, by publication once each week in some newspaper of the county in which said lands are situated, and one newspaper at the state capital for a period of four weeks, to give notice that said land, or any part thereof as the board in their discretion may deem is for the best interest of the state, is open for settlement, the price for which said land will be sold to settlers by the state and the contract price at which settlers can purchase water rights or shares in such works.

1901, 6th Ses. p. 197.

Section 496. Application to Enter Land, Proceedings Relating Thereto: Any citizen of the United States, or any person having declared his intention to become a citizen of the United States (excepting married women) over the age of twenty-one years, may make application, under oath, to the board, to enter any of said land in an amount not to exceed one hundred and sixty acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of actual reclamation, cultivation and settlement in accordance with the act of congress and the laws of this state relating thereto, and that the ap-

plicant has never received the benefit of the provisions hereof to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under consideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company or association who has been authorized by the board to furnish water for the reclamation of said lands; and, if said applicant has at any previous time entered lands under the provisions of this sub-division, he shall so state in his application, together with description, date of entry and location of said land.

The board shall thereupon file in its office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications for entry shall be accompanied by a payment of twenty-five cents per acre, which shall be paid as a partial payment on the land if the application is allowed; and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed the twenty-five cents per acre accompanying it shall be refunded to the applicant.

The board shall dispose of all lands accepted by the state under the provisions of this sub-division at a uniform price of fifty cents per acre, half to be paid at the time of entry and the remainder at the time of making final proof by the settler.

1899, 5th Ses. p. 288, Sec. 17; 1895, 3d Ses. p. 225, Sec. 17.

Section 497. Disposition of Money Received for Arid Lands: As provided in the act of congress, all moneys received by the board from the sale of lands selected under the provisions of this sub-division shall be deposited with the state treasurer, and such sums as may be necessary shall be available for the payment of the expenses of the board and of the state engineer's office incurred in carrying out these provisions.

Such expenses shall be paid by the state auditor in the manner provided by law upon vouchers duly approved by the state board of examiners for the work performed under its direction, and by the state engineer for all work performed by the state engineer's office; and any balance remaining over and above the expense necessary to carry out these provisions, shall constitute a trust fund in the hands of the state treasurer to be used only for the reclamation of other arid lands.

1899, 5th Ses. p. 288, Sec. 18; 1895, 3d Ses. p. 226, Sec. 18.

Section 498. Cultivation of Land and Final Proof by Settlers: Within one year after any person, or persons, company, association or incorporated company, authorized to construct irrigation works under the provisions of this sub-division, shall have notified the settlers under such works that they are prepared to furnish water under the terms of their contract with the state, the said settler shall cultivate and reclaim not less than one-sixteenth part of the land filed upon, and within two years after the said notice the settler

shall have actually irrigated and cultivated not less than one-eighth of the land filed upon, and within three years from the date of said notice the settler shall appear before the secretary of the board, a judge or clerk of the district court, or United States circuit court, or commissioner, to be designated by the board, within the state, and make final proof of reclamation, settlement and occupation, which proof shall embrace evidence that he is the owner of shares in such works which entitle him to a water right for his entire tract of land sufficient in volume for the complete irrigation and reclamation thereof; that he has been an actual settler thereon and has cultivated and irrigated not less than one-eighth part of said tract; and such further proof, if any, as may be required by the regulations of the department of the interior and the board. The officer taking this proof shall be entitled to receive a fee of two dollars, which fee shall be paid by the settler and shall be in addition to the price paid to the state for the land. All proofs so received shall be submitted by the secretary to the board and shall be accompanied by the last and final payment for said land, and, on the approval of the same by the board they shall be forwarded to the secretary of the interior with a request that a patent to said lands be issued to the state: *Provided*, That when the secretary shall take final proof, all fees received by him shall be turned into the state treasury. When, however, any of such lands shall remain unentered, or shall not be filed upon after two years from the date of the completion of the works designed for their irrigation, and which must in no case be less than two years from the date such lands were declared open for entry and settlement, the State of Idaho shall, through the state board of land commissioners, make proof that such works have been completed for the reclamation of such lands before the department of the interior, and shall apply for a patent to such lands in the manner provided in the regulations of the department of the interior: *Provided*, That when such patent has been issued to the state, the said board shall, upon application, issue a patent to such lands to the person, company, or association constructing such works and furnishing water for such lands, upon the payment to the board of the price of such lands.

1901, 6th Ses. p. 198.

Section 499. Patent by Board to Settler Upon Receipt of United States Patent: Upon the issuance of a patent to any lands by the United States to the state, notice shall be forwarded to the settler upon such land. It shall be the duty of the board, under the signature of the president and attested by its secretary, to issue a patent to said lands from the state to the settler.

1899, 5th Ses. p. 289, portion of Sec. 20; 1895, 3d Ses. p. 227, portion of Sec. 20.

Section 500. Person Furnishing Water Has First Lien: The water rights to all lands acquired under the provisions of this sub-division shall attach to and become appurtenant to the land as soon as title passes from the United States to the state. Any person, company or association, furnishing water for any tract of land,

shall have a first and prior lien on said water right and land upon which said water is used, for all deferred payments for said water right; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner and possessor of said land; said lien to remain in full force and effect until the last deferred payment for the water right is fully paid and satisfied according to the terms of the contract under which said water right was acquired. The contract for the water right upon which the aforesaid lien is founded shall be recorded in the office of the county clerk of the county where said land is situate.

1899, 5th Ses. p. 289, portion of Sec. 20.
20; 1895, 3d Ses. p. 227, portion of Sec.

Section 501. Foreclosure and Sale: Upon default of any of the deferred payments secured by any lien under the provisions of this sub-division, the person, persons, company, association or corporation, holding or owning said lien, may foreclose the same according to the terms and conditions of the contract granting and selling to the settler the water right. All sales shall be advertised in a newspaper of general circulation, published in the county where said land and water right is situate, for six consecutive weeks, and shall be sold to the highest bidder at the front door of the court house of the county, or such place as may be agreed upon by the terms of the aforesaid contract. And the sheriff of said county shall in all such cases give all notices of sale, and shall sell all such land and water rights, and shall make and execute a certificate of sale to the purchaser thereof. And at such sale no person, persons, company, association or corporation, owning and holding any lien, shall bid in or purchase any land or water right at a greater price than the amount due on said deferred payment for said water right and land, and the costs incurred in making the sale of said land and water right.

1899, 5th Ses. p. 289, portion of Sec. 20.
20; 1895, 3d Ses. p. 228, portion of Sec.

Section 502. Time for Redemption: At any time within nine months after the foreclosure sale by the sheriff of the land and water rights aforesaid, the original owner against whom the lien has been foreclosed, may apply to the person, persons, company, association or corporation, purchasing at such sale, to redeem such land and water rights and the purchaser shall assign the certificate of sale of such land and water rights to such original owner, upon the payment by him within said nine months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon.

1899, 5th Ses. p. 290, portion of Sec. 20.
20; 1895, 3d Ses. p. 228, portion of Sec.

Section 503. Stranger may Redeem, When: Where the lien holder becomes the purchaser at such foreclosure sale, if such land and water rights are not redeemed by the original owner within nine months, then at any time within three months after the expiration of said nine months, any person desiring to settle upon

and use such lands and water rights, may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale of such land and water rights to the person desiring to redeem the same, upon the payment by him, within said three months, of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs and fixed charges thereon.

1899, 5th Ses. p. 290, portion of Sec. 20.
20; 1895, 3d Ses. p. 229, portion of Sec.

Section 504. Duty of Sheriff on Foreclosure and Sale: Upon issuing any certificate of sale, it shall be the duty of the sheriff to file for record in the office of the county clerk of the county where such land is situated, a certified copy of such certificate of sale; and, in case the original owner shall redeem the land and water rights sold as aforesaid, he shall file for record in the office of such county clerk, the certificate of sale assigned to him by the purchaser as aforesaid, upon his redemption of such land and water rights. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, issue a deed for such land and water rights to the person so redeeming the same. If the land and water rights shall not be redeemed by any person within the times and in the manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of the certificate of sale by the original purchaser, to issue a deed to such purchaser. Where such land and water rights are not purchased by the lien holder at such foreclosure sale, it shall be the duty of the sheriff to first pay the lien holder, out of the proceeds of such sale, the amount of the lien, together with all interest, costs and fixed charges thereon, and to pay any balance remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by law in civil cases.

1899, 5th Ses. p. 290, portion of Sec. 20.
20; 1895, 3d Ses. p. 229, portion of Sec. Sheriff's fees: Sec. 1768.

Section 505. Maps, What Shall Show. Right of Way for Canal: The maps in the office of the board, of the lands selected under the provisions of this sub-division, shall show the location of the canals or other irrigation works approved in the contract with the board, and all lands filed upon shall be subject to the rights of way of such canals or irrigation works. Said right of way to embrace the entire width of the canal and such additional width as may be required for its proper operation and maintenance. the width of right of way to be specified in the contracts herein provided for.

1899, 5th Ses. p. 290, Sec. 21; 1895, 3d Ses. p. 230, Sec. 21.

Section 506. Board to Provide Suitable Rules. Records and Reports: The board shall provide suitable rules for the filing of proposals for constructing irrigation works, and for the entry of and payment for the land by settlers, and for the for-

feiting of entry by settlers upon failure to comply with the provisions of this sub-division. There shall be kept in the office of the board, for public inspection, copies of all maps, plats, contracts for the construction of irrigation works, and of the entries of land by settlers. It shall require from each person, persons, company, association or corporation, engaged in the construction of irrigation works, under the provisions of this sub-division, an annual report, to be submitted to the board on or before November 1st of each year. This report shall show the number of water rights sold, the number of users of water under said irrigation works, the legal sub-divisions of land for which water is to be furnished, the names of the officers of the company, the acreage of land which the said irrigation works is prepared to supply with water, and such other data as the board sees fit to require. The rules required by this section may be waived in the case of irrigation works being constructed by a person, colony or association of persons to furnish water for land settled upon and being reclaimed by themselves.

1899, 5th Ses. p. 291, Sec. 22; 1895, 3d Ses. p. 230, Sec. 22.

Section 507. Employees; Collection of Fees: The board shall prescribe the duties of all its employees and shall collect the following fees:

For filing each application one dollar; for making certified copies of papers or records, the same fee as is provided to be charged by the secretary of state for like services. The money collected for fees shall be paid to the treasurer of the state and by him credited to the fund created by virtue of this sub-division.

1899, 5th Ses. p. 291, Sec. 23; 1895, 3d Ses. p. 230, Sec. 23.

Section 508. Annual Report of Board, What to Contain:

The board shall issue on or before November 30th of each year a report setting forth in detail the names, location and character of the irrigation works in process of construction, the acreage and legal sub-divisions of land intended to be reclaimed, the estimated cost of said irrigation works, and the price of water rights from such irrigation works, and the terms of payment for both water rights and land. Not less than five thousand copies of such report shall be printed for gratuitous distribution.

1899, 5th Ses. p. 291, Sec. 24; 1895, 3d Ses. p. 230, Sec. 24.

Section 509. Title to Suits Instituted by Board: All suits or actions brought by the board, under the provisions of this chapter, shall be instituted by the board in the name of the people of the State of Idaho.

1899, 5th Ses. p. 291, Sec. 25; 1895, 3d Ses. p. 231, Sec. 25.

CHAPTER XIV.

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ORDNANCE STORES.

Section 510. Governor to Hold as Property of the State: All ordnance and ordnance stores belonging to the state are under the control and management of the governor as commander-in-chief of the militia of the state, to be by him held as the property of the state, and to be used solely for the purpose of public defense under such rules and regulations as the governor may prescribe.

1887 R. S. Sec. 740; Compiled Laws 1875, p. 717.

Section 511. Expense of Preserving Ordnance, how paid: For the purposes of defraying the necessary expenses of preserving ordnance, and ordnance stores, the state auditor must, upon the written order of the governor, issue warrants upon the treasurer for the sum necessary to meet such expenses; said warrants to be paid out of any money in the treasury not otherwise appropriated; the said ordnance and ordnance stores must be stored in the capitol building, and the warrants drawn by the order of the governor, for all expenses connected with said ordnance and ordnance stores, must not exceed one hundred and fifty dollars per annum.

1887 R. S. Sec. 741; Compiled Laws 1875, p. 717.

Board of examiners must audit claims: Const. Art. IV, Sec. 18; also Sec. 344 et seq. of this Code.

Section 512. Governor may Loan to Grand Army: The governor of this state is hereby empowered to loan to the grand army posts within the state, arms and equipments not to exceed six stands to each post, upon said grand army post receipting for the same; with a provision that they be returned on demand, and without expense to the state. And in case any part of said arms and equipments are lost by fire or otherwise, that the value thereof as stipulated when

the arms were drawn, together with the freight thereon, be returned to the state treasury.

1887 R. S. Sec. 742.

Unlawful disposal of military stores,
penalty: Penal Code, Sec. 4805.

MILITIA.

Section 513. Militia, of Whom Shall Consist: The militia of the State of Idaho shall consist of all able bodied male persons, resident of the state, between the ages of eighteen and forty-five years, excepting such persons as are now or may hereafter be exempted by the laws of this state or of the United States.

1899, 5th Ses. p. 156, Sec. 1; 1891, 1st
Ses. p. 217, Sec. 1.

Persons exempt: Sec. 528; but see
Const. Art. XIV, Sec. 1.

Section 514. Appointment of Officers; Bonds of Certain Officers: The governor of this state, as commander-in-chief of the militia, shall appoint such of the following named officers on his staff as in his discretion the growth of Idaho national guard shall demand, viz: Adjutant-general, inspector-general, quartermaster-general, commissary-general of subsistence, a paymaster-general, judge advocate-general, surgeon-general, who shall be a practicing physician, and a mustering officer, each with the rank of colonel of cavalry, and six aides-de-camp, with the rank of lieutenant colonel of cavalry. He may appoint such clerks as the adjutant-general may require, for the proper discharge of the duties appertaining to that office, and shall require the quartermaster-general, the paymaster-general and commissary-general of subsistence, each, to execute a bond in the penal sum of five thousand dollars, conditioned upon their proper care and accounting for such public property and moneys as may be in their official charge.

1899, 5th Ses. p. 156, Sec. 2; 1891, 1st Ses. p. 218, Sec. 2.

Section 515. Duties of Adjutant-General: It shall be the duty of the adjutant-general to promulgate all orders from the commander-in-chief; to attend all musters when the commander-in-chief reviews the national guard, or any portion thereof; to obey all orders from him relative to carrying into execution, or perfecting the system of military discipline established by law; to furnish blank forms of reports and returns and of all official papers that may be required, and to explain the principles upon which they should be made out; to receive from commanding officers throughout the state returns of the national guard under their command; to make the proper abstracts from such returns and lay the same before the commander-in-chief annually, and to make annual returns of the militia of the state to the president of the United States; he is charged with all the correspondence of the commander-in-chief on the subject of military affairs; he shall countersign all commissions signed by the commander-in-chief and record the same; he shall keep a record of all official correspondence in books prepared for that purpose; he shall be entitled to receive a compensation of five hundred dollars per

annum, to be paid quarterly out of the military fund, in the same manner as other salaries of state officers are paid.

1899, 5th Ses. p. 156, Sec. 3; 1891, 1st Ses. p. 218, Sec. 3.

Section 516. Duties of Inspector-General: The inspector-general shall inspect, as often as may be deemed necessary by the commander-in-chief, every branch connected with the military service of the state, including the rifle practice, the transaction of company business, the condition of public property, armories, military storehouses and camps; and he shall report to the commander-in-chief, annually, on the first day of December, the conditions, discipline and tactical instructions of the national guard, as well as all matters pertaining to his department.

1899, 5th Ses. p. 156, Sec. 4; 1891, 1st Ses. p. 219, Sec. 4.

Section 517. Duties of Quartermaster-General: The quartermaster-general shall receive and be responsible for all arms, ammunition and ordnance stores and all clothing and equipage received by the State of Idaho; shall issue the same on requisitions properly approved by the commander-in-chief. He shall have charge of all armories and military storehouses, and shall keep them in repair to such an extent as he may be furnished with funds for that purpose. The accounts of his department shall be kept in proper books and by the necessary blank forms, which shall be furnished by the adjutant-generals' office. He shall render an annual report on the first day of December to the commander-in-chief, embracing the operations of his office for the year, and such recommendations as he may deem for the best interests of the service.

1899, 5th Ses. p. 156, Sec. 5; 1891, 1st Ses. p. 219, Sec. 5.

Section 518. Duties of Paymaster-General: The paymaster-general's office shall be the channel through which vouchers for military service, supplies and transportation shall be transmitted to the state auditor. The paymaster-general shall countersign all such vouchers properly certified, citing the act of the legislature which appropriates the necessary funds, and transmit the same to the state board of examiners. He shall keep himself informed of the condition of the military fund, and to this end the state treasurer is directed to furnish such information whenever requested by the paymaster-general. He shall pay the national guard when called into service, and shall keep his official accounts in proper books, to be furnished his office, on requisition, by the adjutant-general. He shall, annually, on the first day of December, and at such other times as may be indicated by the commander-in-chief render to him an itemized account of all the operations of his office, embracing such recommendations as he may deem for the best interests of the service.

1899, 5th Ses. p. 157, Sec. 6; 1891, 1st Ses. p. 219, Sec. 6.

Section 519. Duties of the Judge Advocate-General: The judge advocate-general is charged with the supervision, care and management of all matters relating to the administration of jus-

tice among the military forces of the state, and shall, annually, on December 1st, make a report thereof to the commander-in-chief.

1899, 5th Ses. p. 157, Sec. 7; 1891, 1st Ses. p. 219, Sec. 7.

Section 520. Duties of Commissary-General, Surgeon-General and Mustering Officer: The commissary-general of subsistence, surgeon-general and mustering officer shall perform the duties of their respective offices, subject to such rules and regulations as may be prescribed, and to such orders as may be issued by the commander-in-chief for their government and instruction; they shall also make, annually, on the first day of December, a report of the condition and operation of their offices to the commander-in-chief.

1899, 5th Ses. p. 157, Sec. 8; 1891, 1st Ses. p. 220, Sec. 8.

Section 521. Oath of Office and Uniforms: Every commissioned officer of the Idaho national guard shall take the oath of office within ten days, and provide himself with a suitable uniform, arms and equipments within sixty days, from the date of his election or appointment, or he shall be deemed to have resigned his commission.

1899, 5th Ses. p. 157, Sec. 9; 1891, 1st Ses. p. 220, Sec. 9.

Section 522. Regiment and Battalions, Officers of: Each regiment shall consist of not less than eight nor more than twelve companies, and shall have a colonel, lieutenant-colonel, a major, a surgeon, with the rank of major; an assistant surgeon, with the rank of captain; and adjutant and quartermaster, each with the rank of first lieutenant; a chaplain, with the rank of captain, and a non-commissioned staff, to consist of a sergeant-major, a quartermaster-sergeant, a commissary-sergeant, a hospital steward and two principal musicians. Every battalion of four companies shall have a major, with an adjutant and quartermaster detailed for these duties from the first lieutenants of the companies composing the battalion, by the commander-in-chief, on recommendation of the major. A battalion of six companies shall have a lieutenant-colonel and a major, together with an adjutant, and quartermaster, detailed from the first lieutenants of the companies composing the battalion, by the commander-in-chief, on the recommendation of the lieutenant-colonel; a chaplain, a sergeant-major, quartermaster-sergeant, commissary-sergeant, and hospital steward. A battalion or a regiment shall have but one band to consist of a drum-major, a leader, with the rank of sergeant-major, and as many musicians, who must be enlisted in the regiment or battalion, as the commanding officer may designate, not to exceed twenty.

1899, 5th Ses. p. 157, Sec. 10; 1891, 1st Ses. p. 220, Sec. 10.

Section 523. Field Officers Elected; Staff Officers Appointed: Regimental and battalion field officers shall be elected by the officers and enlisted men of the respective regiments and battalions. Officers of the regimental and battalion staff shall be appointed and commissioned by the commander-in-chief, on the re-

commendation of the regimental or battalion commander. The non-commissioned staff shall be appointed by the regimental or battalion commander.

1899, 5th Ses. p. 158, Sec. 11; 1891, 1st Ses. p. 220, Sec. 11.

Section 524. Company, Officers and Privates: Each company shall consist of a captain, first lieutenant, second lieutenant, first sergeant, four sergeants, four corporals, at least two musicians, and not less than twenty four nor more than eighty-three privates. The armory of each company shall be considered as post headquarters, and the commander of a company empowered to appoint an acting quartermaster, who must be a commissioned officer, and an acting quartermaster-sergeant, who must be enlisted in the company. Captains and lieutenants shall be elected by written or printed ballots, cast by the enlisted men of the respective companies. Company non-commissioned officers shall be appointed by the company commander, to serve as such during good behavior.

1899, 5th Ses. p. 158, Sec. 12; 1891, 1st Ses. p. 221, Sec. 12.

Section 525. Duty of Assessor to Make List: It shall be the duty of the assessor of each county on the state, annually, at the time prescribed by law for assessing property, to make out a list of all persons in the respective counties who are liable to do military duty, under the laws of the United States and of the State of Idaho, which list shall designate the precinct in which each person named in such list resides, and shall be filed by such assessor in the office of the county auditor of the respective counties, at the same time and in the same manner as is provided by law for the assessment roll; and the auditor shall keep the same open for inspection, as is provided by law for the assessment roll, and also record the same alphabetically in his office in a book to be kept for that purpose.

1899, 5th Ses. p. 158, Sec. 13; 1891, 1st Ses. p. 221, Sec. 13.

Section 526. Duty of County Auditor Respecting Militia: The said military assessment list shall be corrected in the same manner and at the same time as is provided by law for the assessment roll; and it shall be the duty of the county auditor of each county, within twenty days after the list has been corrected, to transmit to the adjutant-general of the state a certificate, under his official seal, of the total number of names on such military assessment list, arranged according to the several precincts of the county.

1899, 5th Ses. p. 158, Sec. 14; 1891, 1st Ses. p. 221, Sec. 14.

Section 527. Idaho National Guard, and Idaho Reserve Militia: All persons subject to military duty under the laws of the United States and of the State of Idaho, and such other male persons as shall voluntarily enroll themselves, shall be divided into two classes, to-wit: One consisting of those who enlist in the active militia of the state, under the provisions of this title, which shall be known as the Idaho national guard; the other to consist of all those subject to military duty, but not included in the active or

enlisted militia; the latter class to be known as the Idaho reserve militia.

1899, 5th Ses. p. 158, Sec. 15; 1891, 1st Ses. p. 221, Sec. 15.

Section 528. Persons Exempt from Military Duty:

The following named classes of persons are exempt from military duty:

First.—All persons in the army or navy or volunteer forces of the United States, and those who have been honorably discharged therefrom.

Second.—All regularly ordained ministers of the gospel, and all practicing physicians.

Third.—Idiots, lunatics, paupers, habitual drunkards and persons convicted of infamous crimes, who have not been restored to citizenship.

1899, 5th Ses. p. 158, Sec. 16; 1891, 1st Sec. 1.
Ses. p. 222, Sec. 16; Const. Art. XIV,

Section 529. Term of Enlistment: All enlistments in the Idaho national guard shall be for the term of three years. The term of service for officers of the line shall be three years; for officers of the staff, two years, or during the pleasure of the commander-in-chief.

1899, 5th Ses. p. 159, Sec. 17; 1891, 1st Ses. p. 222, Sec. 17.

Section 530. Enlistment, how Made: All enlistments in the Idaho national guard shall be made by signing the muster roll of the company and its regulations and by-laws; as soon as practicable after his enlistment, the following oath or affirmation shall be administered to the recruit by any commissioned officer:

"I....., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and to the State of Idaho; that I will serve them honestly and faithfully, and that I will obey the orders of the officers appointed over me, in accordance with the laws, and the rules and regulations for the government of the Idaho national guard."

1899, 5th Ses. p. 159, Sec. 18; 1891, 1st Ses. p. 222, Sec. 18.

Section 531. Annual Expense for Armory Buildings:

There may be expended, under the direction of the commander-in-chief, annually, in each county of the state out of the general fund, not to exceed one hundred dollars, and, in addition thereto, the county commissioners of each county may, in their discretion, expend, annually, not to exceed one hundred and fifty dollars out of the county current expense fund, for rent or purchase of armory buildings for the use of such companies of the Idaho national guard as organize under the provisions of this chapter, and which shall meet at least once in each month in such armory for military instruction. At such meetings the commanding officer of such companies, or some suitable person detailed by him, shall drill the company not less than two hours in the school of the soldier, the manual of arms, and the movements of the company.

1899, 5th Ses. p. 159, Sec. 19; 1891, 1st Ses. p. 222, Sec. 19.

Section 532. Courts-Martial and Courts of Inquiry:

The commander-in-chief may order courts-martial for the trial of officers and enlisted men, at such times as the interest of the service may require; courts of inquiry may be ordered by the commander-in-chief to examine into the nature of any transaction of, or accusation or charge against, any officer or soldier. Regimental and battalion courts-martial and courts of inquiry may be convened by order of commandants of regiments and battalions, approved by the commander-in-chief; garrison courts-martial shall be convened by order of commandants of companies, approved by battalion commanders. All courts-martial and courts of inquiry shall be organized and governed, as near as may be, in conformity with the articles of war and the regulations established for the government of the United States army; and the proceedings, findings and sentences thereof shall be reviewed by the judge advocate-general, and shall be submitted by him to the commander-in-chief for his action.

1899, 5th Ses. p. 159, Sec. 20; 1891, 1st Ses. p. 223, Sec. 20.

MARTIAL AND CIVIL JURISDICTION DISTINGUISHED: The judgments of courts-martial, when acting

within their jurisdiction are as valid as are those of the civil courts. Neither can overrule or assume the jurisdiction of the other.—Bright v. Morrow, 1 Utah, 145.

Section 533. President of Court, Powers: The president of a court-martial or court of inquiry may issue an order to enforce the attendance of witnesses, and punish a refusal to be sworn or to answer in the same manner as is provided for a magistrate in civil actions.

1899, 5th Ses. p. 159, Sec. 21; 1891, 1st Ses. p. 223, Sec. 21.

Section 534. Collection of Fines: When fines assessed by courts-martial or courts of inquiry are not paid within thirty days after the sentences are approved, a list thereof and of the delinquents, certified by the judge advocate of such courts-martial or courts of inquiry, shall be placed in the hands of justices of the peace within the precincts in which the delinquents reside, who shall thereupon render judgment and proceed to collect the same, as in other civil actions.

1899, 5th Ses. p. 159, Sec. 22; 1891, 1st Ses. p. 223, Sec. 22.

Section 535. Discharges, How Made and Causes:

Honorable discharges of officers from service in the national guard of Idaho may be granted by the commander-in-chief upon expiration of the term of service, or in case of removal, on evidence being furnished him that the officer is not indebted to the State of Idaho and is not responsible for any public property. No enlisted man shall be discharged before the expiration of his term of service, except by order of the commander-in-chief, and for the following reasons: To accept promotion by commission; upon removal of residence from the state, or permanent removal to such distance from the command to which he belongs, that, in the opinion of his commanding officer, he cannot perform his military duties; upon disability, established by the certificate of a medical officer, whenever, in the opinion

of the commander-in-chief, the interests of the service demand such discharges. Dishonorable discharges of officers and enlisted men shall be published by the commander-in-chief in court-martial orders, in pursuance of sentence of court-martial or court of inquiry.

1899, 5th Ses. p. 160, Sec. 23; 1891, 1st Ses. p. 223, Sec. 23.

Section 536. Mileage of Officers: Officers traveling on duty in compliance with orders from or approved by the commander-in-chief shall be paid mileage at the same rate as are provided by law for the members of the state legislature.

1899, 5th Ses. p. 160, Sec. 24; 1891, 1st Ses. p. 224, Sec. 24.

Mileage of members of legislature:
Const. Art. III, Sec. 23.

Section 537. Pay of Officers and Men When in Active Service: The officers and enlisted men of the Idaho national guard, when called into active service by proclamation of the commander-in-chief, shall receive the same rates of pay and subsistence as, and the uniform and equipments shall be identical with, those provided by the United States for the regular army.

1899, 5th Ses. p. 160, Sec. 25; 1891, 1st Ses. p. 224, Sec. 25.

Section 538. Exempt from Road and Poll Tax: All officers and enlisted men of the Idaho national guard are hereby declared exempt from all poll or road tax and jury duty, so long as they continue active members thereof.

1899, 5th Ses. p. 160, Sec. 26; 1891, 1st Ses. p. 224, Sec. 26.

Section 539. Bonds of Officers Having Military Stores: The adjutant-general shall require proper bonds to be given by all officers who have military stores in their possession, with good and satisfactory sureties, conditioned on the safe keeping of public property and the faithful accounting for the same; said bonds to be approved by the commander-in-chief and filed in the office of the adjutant-general before any public property is turned over to applicants.

1899, 5th Ses. p. 160, Sec. 27; 1891, 1st Ses. p. 224, Sec. 27.

Section 540. Governor to Formulate System of Regulations: It shall be the duty of the governor of Idaho, as commander-in-chief, to formulate a system of regulations for the Idaho national guard, founded upon the militia law enacted in this chapter, which regulations shall have all the force and virtue of law, when promulgated by the adjutant-general.

1899, 5th Ses. p. 160, Sec. 28; 1891, 1st Ses. p. 224, Sec. 28.

Section 541. Expenses of Adjutant-General's Office, Appropriations: For the contingent expenses of the adjutant-general's office, there is hereby appropriated the sum of two hundred and fifty-five dollars, annually, out of the general fund, or so much thereof as the adjutant-general may sign requisitions for. And the state treasurer is hereby authorized and directed to pay the said requisitions upon a warrant therefor by the state auditor upon bill approved by the state board of examiners.

1899, 5th Ses. p. 160, Sec. 29; 1891, 1st Ses. p. 224, Sec. 29.

Section 542. Power of Commander-in-Chief in Invasion, Etc.: The commander-in-chief shall have power, in case of invasion, insurrection or other breaches of the peace, or imminent danger thereof, to order into the service of the state any of the companies or regiments of the Idaho national guard, or the reserve militia, that he may deem proper, and under the command of such officers as he may designate.

1899, 5th Ses. p. 160, Sec. 30; 1891, 1st Ses. p. 225, Sec. 30.

MARTIAL AND MILITARY LAW DISTINGUISHED: Martial and military law are not the same. The former depends largely upon the discre-

tion of the chieftain who proclaims it. The latter is as clearly defined as any system of statute, common or civil law. The former may apply both to soldiers and citizens; the latter applies only to the army.—*Bright v. Morrow*, 1 Utah, 145.

Section 543. Shall Use U. S. System of Tactics: The system of tactics and field exercises from time to time ordered for the army of the United States shall be the system of tactics and field exercises of the Idaho national guard.

1899, 5th Ses. p. 161, Sec. 31; 1891, 1st Ses. p. 225, Sec. 31.

Section 544. Payments, how Made: All payments from the military fund shall be made to the paymaster-general, in compliance with regular appropriations by due legislative action, upon vouchers approved by the commander-in-chief and countersigned by the adjutant-general, upon warrants drawn by the state auditor, who shall cause a record of such vouchers to be kept in his office.

1899, 5th Ses. p. 161, Sec. 33; 1891, 1st Ses. p. 225, Sec. 33.

Section 545. Duty of State Treasurer: It shall be the duty of the state treasurer to prepare and submit to the governor, in his annual report, and whenever the governor shall require it, an account of the condition of the military fund, comprising the amounts placed to the credit of said fund, and the several items of disbursement therefrom made during the said period, by due authority of law, arranged so as to show the balance of the said fund remaining unexpended at the close of each calendar year.

1899, 5th Ses. p. 161, Sec. 34; 1891, 1st Ses. p. 225, Sec. 34.

Section 546. Board of "Estimate of Expenses": The adjutant-general, the quartermaster-general, and the paymaster-general, are hereby constituted a board which shall meet at the state capitol shortly before the biennial sessions of the state legislature, or at the call of the commander-in-chief, to prepare an "estimate of the expenses of the militia establishment" for the ensuing two years. The board may have access to all accounts and papers in the office of the state treasurer bearing upon the subject of the receipt and disbursement of public funds for militia purposes. Said "estimate" shall be submitted to the governor of the state for his consideration in time to be transmitted by him to the legislature.

1899, 5th Ses. p. 161, Sec. 35; 1891, 1st Ses. p. 225, Sec. 35.

Section 547. Disposition of Unexpended Balance: Unexpended balance remaining on the 31st day of December in each

year to the credit of either the military fund, or the contingent fund of the adjutant-general's office, shall be turned over to the general fund of the state by the state treasurer in opening his books of account for the new fiscal year.

1899, 5th Ses. p. 161, Sec. 36; 1891, 1st Ses. p. 226, Sec. 36.

Section 548. Annual Encampment: The commander-in-chief of the state militia may, when he deems it necessary for the good of the service, direct that an annual encampment be held at the time and place thereof to be designated in general order.

1899, 5th Ses. p. 161, Sec. 37; 1891, 1st Ses. p. 226, Sec. 37.

Devices, banners and flags that may be used: Const. Art. XIV, Sec. 5.

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CHAPTER XV.

PUBLIC HEALTH, MEDICINE AND SURGERY.

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PRESERVATION OF PUBLIC HEALTH.

Section 549. County Board of Health: The board of county commisisoners of each county must, biennially, at their regular meeting in January, appoint one intelligent person residing in the county, who must be an experienced and skillful physician, and the person so appointed, together with such board of county commissioners, constitute a county board of health for the term of two years, or until successors be appointed and qualified. Any vacancy in such board of health, caused by the death or resignation of such physician or by his refusal to act as a member thereof, must be filled by appointment by the commissioners. If any county has a physician employed to care for the indigent sick of such county, such physician must be appointed by the board of commissioners as a member of the board of health.

1887 R. S. Sec. 1150; 1885, 13th Ses. p. 52.

POWER OF REMOVAL: A physician appointed by the board of county commissioners, as a member of the board of health, and county physician, may be removed at the pleasure of the

board.—State v. Seavey, 7 Wash. 562, 35 Pac. 389.

POLICE POWERS: For a general discussion of the police powers of the state and the power of the legislature to enact police regulations, see In re Morgan (Colo), 58 Pac. 1071.

Section 550. Board to Establish Sanitary Rules: Said county board of health must make and establish for their county, or any district or place therein, such sanitary rules and regulations as they may deem necessary and proper to prevent the outbreak and spread of contagious and infectious diseases.

1887 R. S. Sec. 1151; 1885, 13th Ses. p. 52.

Penalty for violating rules and regulations: Penal Code, Sec. 4727.

POWER OF BOARD NOT EXCLUSIVE: The power given by statute to state and local boards of health is not exclusive of the inherent power of municipal corporations to relieve indigent sick persons in time of epidemic diseases.—Thomas v. Mason, 39 W. Va. 526, 26 L. R. A. 727, 20 S. E. 580.

LEGISLATIVE POWER CANNOT BE DELEGATED: Legislative power cannot be delegated to the board of health so as to enable it, without the enactment of any statute upon the subject to pass any rule to exclude children, who are authorized by statute to attend public schools, from such attendance, unless they have been vaccinated.—State v. Burdge, 95 Wis. 390, 70 N. W. 347.

Section 551. Physicians to Report Contagious Diseases: It is the duty of every practicing physician to report promptly to the county board of health of the county in which he resides all or any disease of an infectious or contagious nature under treatment by him, and said board must at once take the necessary

precaution to prevent the spread of such contagious or infectious disease.

1887 R. S. Sec. 1152; 1885, 13th Ses. p. 52.

Section 552. Quarantine: The board of health of any county may declare quarantine therein or in any particular district or place therein against the introduction of any contagious or infectious disease prevailing in any state, territory, county or place, and of any and all persons and things liable to spread such contagion and infection. The said county board has authority and power to enforce such quarantine until the same is raised by themselves, and may confine such afflicted person or persons liable to spread such contagion or infection to the house or premises in which he or she resides, or if such person has no residence in the county, to a place to be provided by them for the purpose.

1887 R. S. Sec. 1153; 1885, 13th Ses. p. 52.

Section 553. Expenses, How Paid: All necessary expense incurred by the said county board of health in enforcing these provisions must be paid for out of the treasury from the current expense fund of the county.

1887 R. S. Sec. 1154; 1885, 13th Ses. p. 53.

PRACTICE OF PHARMACY.

Section 554. Who may Sell Drugs, Medicines and Poisons: No person, other than a registered pharmacist, shall hereafter retail, compound or dispense drugs, medicines or poisons, or institute or conduct any pharmacy, store, or shop for retailing, compounding or dispensing drugs, medicines or poisons, unless such person shall employ and place in charge of said pharmacy or store a registered pharmacist as hereinafter provided.

1887 R. S. Sec. 1282.

Violation of pharmacy laws: Penal

Penalty for violation of this Sec.: Code, Secs. 4735 to 4738.

Penal Code, Sec. 4735.

Section 555. Who may be Registered as a Pharmacist: In order to be registered, a person must be either a graduate in pharmacy; or at the time this act took effect must have been engaged in the business of a dispensing pharmacist on his own account in the State of Idaho, in the preparation of physicians' prescriptions and in the vending and compounding of drugs, medicines, and poisons, or he must be a licentiate of pharmacy.

1887 R. S. Sec. 1283.

Note:—Original act took effect February 7th, 1887, and all persons not en-

gaged in business on that date were required to be graduates in pharmacy or licentiates of pharmacy.

Section 556. Graduates in Pharmacy, Qualifications: Graduates in pharmacy shall be considered to consist of such persons as have had four years practical experience in drug stores where prescriptions of medical practitioners are compounded, or have obtained a diploma from such colleges or schools of pharmacy as shall be approved by the board of pharmacy. Such qualifications

shall be judged by the said board of pharmacy as sufficient guarantee of their attainments and proficiency.

1887 R. S. Sec. 1284.

Section 557. Licentiates in Pharmacy; Minor Certificates: Licentiates in pharmacy shall be such persons as have had two years practical experience in drug stores wherein the prescriptions of medical practitioners are compounded, and have sustained a satisfactory examination before such board of pharmacy hereinafter mentioned. The said board of pharmacy may grant certificates of registration to licentiates of such other state boards as it may deem proper without further examination. It shall be the duty of the board to grant in towns or villages of less than five hundred inhabitants, a minor certificate to such persons as they may deem competent to sell or vend such medicines and compounds as are required by the general public, but such parties shall not be considered competent unless they have had two years experience in the sale of such medicines and compounds. The said certificate shall entitle the holder thereof only to registration as assistant pharmacist in towns and villages of not over five hundred inhabitants.

1887 R. S. Sec. 1285.

Section 558. Board of Pharmacy, Appointment, Term, Vacancies: The county commisisoners of each county in the State of Idaho shall appoint three reputable and practicing pharmacists or physicians of their county: *Provided*, There be the required three members residing therein; if not, then they shall select so many as may be required to fill said board from the nearest and most convenient adjoining county, and the persons so appointed shall constitute the board of pharmacy of such county, and shall hold office as designated in their appointments, for the term of one, two, and three years respectively, as hereinafter provided. and until their successors have been duly appointed. The county commissioners shall annually thereafter appoint one pharmacist or physician to fill the vacancy annually occurring in said board. The term of office shall be three years. In case of the resignation or removal from the county of any member of said board, or of a vacancy occurring from any cause, the county commissioners shall fill the vacancy by appointing some reputable pharmacist or physician to serve as member of the board for the remainder of the term.

1887 R. S. Sec. 1286. Act approved February 7th, 1887.

Section 559. Organization of Board; Duties: The said board shall within thirty days after its appointment meet and organize by the selection of a chairman and secretary from the number of its own members, who shall serve for the term of one year and shall perform the duties prescribed by the board. It shall be the duty of the board to examine all applications for registration submitted in proper form; to grant certificates of registration to such persons as may be entitled to the same; to cause the prosecution of all persons violating these provisions; and report annually to the county com-

missioners; said report shall furnish a record of the proceedings of the said board for the year, as well as the names of all pharmacists duly registered. The board shall hold meetings for the examination of applicants for registration and the transaction of such other business as shall pertain to its duties, at least once in six months, and the said board shall give thirty days notice of the time and place of such meeting. The said board shall keep a book of registration in which shall be entered the names and places of business of all persons registered, which registration book shall also contain such facts as said persons shall claim to justify their registration.

1887 R. S. Sec. 1287.

Section 560. Registration of Persons Engaged in Business:

Every person claiming the right of registration, who did not within three months after the passage of this act, forward to the board of pharmacy satisfactory proof supported by his affidavit, that he was engaged in the business of dispensing pharmacist on his own account in said county at the time of the passage of this act as provided in section 555, shall in order to be registered, comply with the requirements provided for registration as graduates of pharmacy or licentiates in pharmacy.

1887 R. S. Sec. 1288.

Note:—Act originally passed February 7th, 1887.

Section 561. Clerks and Assistants: Any person engaged in the position of assistant or clerk in pharmacy at the time this act took effect, not less than eighteen years of age, who then had at least two years experience in drug stores, where the prescriptions of medical practitioners were compounded, and who has furnished satisfactory evidence to that effect to the board of pharmacists, and has received a certificate as "registered assistant," is entitled to continue in such duties as clerk or assistant, but cannot engage in business on his own account, except as provided in section 557. He shall pay annually to said secretary the sum of one dollar during the time he shall continue in such duties in return for which sum he shall receive a renewal of his certificate.

1887 R. S. Sec. 1289.

Section 562. Fees for Registration and Renewal:

Every person claiming registration as a registered pharmacist or as a licentiate of some other board shall, before a certificate is granted, pay to the secretary of said board of pharmacy the sum of five dollars. And every applicant for registration by examination shall, before such examination is attempted, pay to the said secretary the sum of ten dollars. And every registered pharmacist who desires to continue the practice of his profession shall, annually, on such date as the board of pharmacy may determine, pay to the secretary of said board such registration fee, not exceeding five dollars, as shall be fixed by the board; and he shall receive in return for said payment a renewal of registration. Every certificate of registration and every

renewal thereof shall be conspicuously exposed in the pharmacy to which it applies.

1887 R. S. Secs. 1290, 1291.

Section 563. Compensation of Members. Fund. Annual Report: Each member of such board of pharmacy shall receive the sum of three dollars per day for each day actually engaged in such service and all legitimate and necessary expenses incurred in attending the meetings of such board; said expenses shall be paid from the fees and penalties received by said board, and no part of the salary, or other expenses of said board, shall be paid out of the public treasury. All moneys received by said board in excess of said allowance and other expenses hereinbefore provided for, shall be held by the secretary of said board as a special fund for meeting the expenses of said board; said secretary giving such bonds as the said board shall from time to time direct. The said board shall in its annual report to the county commissioners render an account of all moneys received and disbursed by it.

1887 R. S. Sec. 1292.

Section 564. Persons not Subject to this Subdivision: Nothing herein shall in any manner interfere with the business of a physician in regular practice, or prevent him from supplying to his patients such articles as may seem to him proper, nor with the making and vending of proprietary medicine or medicines placed in sealed packages with the name of the contents and of the pharmacist or physician by whom prepared or compounded, nor with the sale of the usual domestic remedies by retail dealers, nor with the exclusively wholesale business of any dealers except as hereinafter provided.

Nothing herein shall be so construed as to prevent any general merchant from selling strychnine or phosphorus, or any compound of the same, put up in sealed packages bearing the name of the contents and of the physician or pharmacist by whom prepared or compounded, and sold and designed for the purpose of exterminating rodents or vermin. And such general merchant shall keep a record of the names of all persons purchasing such poisons or poisonous compounds with the date of said purchase.

1887 R. S. Sec. 1293, as amended by act 1889, 15th Ses. p. 9.

Section 565. Responsible for the Quality of Drugs, Poisons: Every proprietor or conductor of a drug store shall be held responsible for the quality of all drugs, chemicals, and medicines sold by him, except those sold in the original packages of the manufacturers, and except those articles or preparations known as patent or proprietary medicines. And no person shall sell or retail any poisons commonly recognized as such and especially aconite, arsenic, belladonna, biniodide of mercury, carbolic acid, chloral hydrate, chloroform, conium, corrosive-sublimate, creosote, croton-oil, cyanide of potassium, digitalis, hydrocyanic acid, laudanum, morphine, nux vomica, oil of bitter almonds, opium, oxalic acid,

strychnine, sugar of lead, sulphate of zinc, white precipitate, red precipitate or cocaine, without affixing to the bottle, box, vessel or package containing the same, and to the wrapper or cover thereof a label bearing the name "poison," distinctly shown, together with the name and place of the seller: *Provided*, That nothing herein contained shall apply to physicians' prescriptions specifying any of the poisons aforesaid. For his own protection the pharmacist shall be required to keep a book to be known as a poison register in which he shall be required to keep a record of the kind of poison sold, the amount sold, for what purpose sold, accompanied with the signature of the purchaser.

1887 R. S. portions of Secs. 1294, 1295.

PRACTICE OF MEDICINE AND SURGERY.

Section 566. Creation of State Board of Medical Examiners:

The governor of the state, shall appoint a board of medical examiners to be known and styled "the state board of medical examiners" consisting of six members, a majority of whom shall never be appointed from nor represent, any one school of medicine, and not less than three schools of medicine shall be at all times represented on said board, all of whom shall be graduates of reputable medical colleges or universities, in good standing, and learned and skilled in the theory and practice of medicine and surgery, and of good moral repute. The terms of office of the members forming the first board shall be as follows, viz: Two members thereof shall be appointed to serve for a period of two years, and two members thereof shall be appointed to serve for a period of four years, and two members thereof shall be appointed to serve for a period of six years. After which all subsequent appointments shall be for a period of six years, and until their successors are appointed and qualified. All persons appointed to serve upon said board shall, upon assuming the duties thereof, make oath before a district or probate judge that they are graduates of colleges or universities in good standing, giving names and location thereof, and that they will faithfully and impartially perform the duties of such office. These oaths shall be made in duplicate, one to be retained on file in the office of the secretary of said board, and one to be forwarded to the secretary of state, who shall on receipt of the same, issue to each member appointed on said board, and complying with this section, a certificate of such appointment, under his hand and the great seal of the state. *Provided*, That the governor shall remove any member of said board who shall be guilty of any criminal or dishonorable conduct, or who shall be guilty of any unprofessional conduct forbidden by this sub-division upon recommendation from the said board, made pursuant to a resolution thereof, duly authenticated and accompanied by all the facts and testimony in possession of said board, upon which the said resolution is based. Vacancies occurring from death, resignation or any other cause shall be filled by appointment by the governor within thirty days from the time such vacancies occur, and such appointee shall serve during the unexpired portion of the term of the member

whose place he fills: *Provided, further,* That after the board shall have been constituted and organized, no person otherwise eligible shall thereafter be appointed on said board who is not in possession of license to practice medicine and surgery in this state.

1899, 5th Ses. p. 345, Sec. 1.

Section 567. Board to Establish Rules: Said board shall have authority to prescribe and establish all needful rules, regulations and by-laws, not inconsistent with the laws of this state, or the United States, to carry into effect the provisions of this sub-division.

1899, 5th Ses. p. 346, Sec. 2.

Section 568. Organization of Board. Meetings, Records, Etc.: Said board shall organize immediately after appointment by electing from among its members a president, secretary, and a treasurer, and shall provide a seal and shall attest its acts under said seal. Any member of the board shall have authority to administer oaths,—and the board shall have authority to take testimony whenever the same is necessary upon any subject relating to its official acts or duties. Said board shall hold regular meetings on the first Tuesday in the months of April and October in each year, at the capital of the state, or at such other places as the board shall designate. Special meetings may also be called, when, in the opinion of a majority of said board the same is necessary, and shall be held at such times and places as a majority of the board may designate. Said board shall keep a minute book or general book of record in which all the official acts, proceedings, and transactions of said board shall appear in full. They shall also keep in addition thereto a cash book, in which shall appear in detail all receipts and disbursements of said board. They shall also keep a special register, containing the names and addresses of all applicants for license, together with the data required to be furnished in the application for said license. Said special register shall also show whether the applicant received license or was rejected, and if the applicant was rejected, it shall contain a full statement of the reasons therefor. Said general book of record, the cash book, and the special register, shall be prima facie evidence of all matters therein recorded, and shall be public records in charge of the secretary of the board.

1899, 5th Ses. p. 346, Sec. 3.

Public records may be inspected:
Sec. 338.

Section 569. Annual Report: The board shall make an annual report to the governor of the state, which report shall set forth a full and complete history of all its official acts during the year, and shall also contain a true statement of all receipts and disbursements of said board for the period so reported.

1899, 5th Ses. p. 346, Sec. 4.

Annual report, when made: Sec. 339.

Section 570. Manner of Obtaining Certificates: Every person, except as hereinafter provided, desiring to commence the practice of medicine and surgery, or either of them, within the state shall, immediately and prior to commencing the same, make a

written application to the state board of medical examiners, upon suitably prepared blanks, to be furnished by the board, for a license so to do. The applicant shall transmit with said application his or her diploma together with an affidavit setting forth that said diploma is genuine and that the applicant is the rightful possessor thereof and the identical person named therein, and that the same was obtained by pursuing the regular course of study or examination in said institution, and setting forth that he or she is a citizen of the United States, or has declared his or her intention of becoming such. If the said diploma has been issued by a reputable college of medicine in good standing said applicant shall be eligible to examination.

All applicants shall be examined in the applied branches of the theory and practice of medicine and surgery or either of them, as those branches are taught in the reputable chartered schools of the system of medicine to which the applicant belongs and which the applicant intends to practice, and such examination shall in all cases include anatomy, physiology, pathology, diagnosis, hygiene, chemistry, histology and toxicology.

No applicant for license shall be allowed to practice medicine and surgery or either of them until such license shall have been granted. The board shall cause the examination to be scientific and practical and sufficiently thorough to test the applicant's fitness to practice medicine and surgery, or either of them, and if the applicant correctly answer at least seventy-five per cent. of all the questions submitted, said board shall grant the applicant a license to practice medicine and surgery in this state. Every applicant for license, must furnish sufficient evidence to the board that he or she is of good moral character. All applications under this section must be accompanied by twenty-five dollars which is the fee for examination. Should the applicant fail to pass said examination, the fee is not returnable. The cost of transmission to and from the board of all papers belonging to an applicant shall be paid by the applicant. In case an applicant, for an examination fails to pass the required examination, he or she may be re-examined after the expiration of six months, and within one year, without the payment of an additional fee, and thereafter said applicant may be examined as often as desired at any regular or special meeting of the board on the payment of the regular fee for such examination. Said board may also refuse a license for unprofessional conduct, or conduct of a criminal, immoral, or dishonorable nature.

1899, 5th Ses. p. 347, Sec. 6.

Note:—Physicians practicing in the state at the time of the passage of this act, under the provisions of an act of 1887, R. S. p. 193, were by Sec. 5 of this act, entitled to license if applied for within six months. Sec. 5 of the act of 1899 is as follows:

Sec. 5. All persons, except as hereinafter provided, who were legally engaged in the actual practice of medicine and surgery or either of them within the state, at the time of the passage of

this act, under the provisions of the medical act of 1887, shall be licensed without examination to continue such practice under this act, by making application to the state medical examining board upon, suitably prepared blanks to be furnished by said board, within six months from the taking effect of this act. The applicant shall be required to transmit with said application, a certificate from the county recorder from the county in which he may reside, that said applicant is a

bona fide resident of the state and has recorded his diploma under the provisions of the medical act of 1887, giving date of such record. Persons who received a license under the now defunct medical law of 1897 will simply be required to transmit such license. The fee for license under this section shall be five dollars and shall in each case accompany the application. Upon fulfillment of the requirements herein stated, the board shall issue to said applicant a license to practice medicine and surgery within this state. Persons for whom the provisions of this section are intended, failing or refusing to avail themselves of the same, shall be and are hereby subject to the requirements of section six of this act.

Practicing without license: Penal Code, Secs. 4739, 4740.

POLICE POWER: A state which prescribes the qualifications necessary in order to engage in the practice of medicine and surgery, requiring applicant to have learning and skill, is an exercise of police power inherent in the state.—*Eastman v. State* (Ind.), 10 N. E. Rep. 97; *Orr v. Meek* (Ind.), 11 N. E. Rep. 787.

NOT IN VIOLATION OF U. S. CONST.: Requiring that persons engaging in the practice of medicine and surgery must possess certain qualifications, is not in conflict with Const. U. S. Art. 4, Sec. 2, nor the provisions of the 14th Amend., providing that "no state shall deprive any person of property without due process of law, or make or enforce any law which shall abridge the privileges or immunities of citizens of the United States";—*Harding v. People* (Colo.), 15 Pac. 727; *State v. Carey* (Wash.), 30 Pac. 729; *State v. Randolph* (Or.), 31 Pac. 201; *Craig v. Board of Med. Ex.* (Mont.), 29 Pac. 532; *State v. Creditor* (Kan.), 24 Pac. 346.

Authorizing the licensing, without examination, those who were, but not those who were not in actual practice at its passage, and also persons who have practiced for ten years in the state before the taking effect of the act, does not violate Const. U. S.—*People v. Hasbrouck* (Utah), 39 Pac. 919.

EQUAL PRIVILEGES AND IMMUNITIES: The equal privileges or immunities of citizens are not infringed by a statute which exempts those who are practitioners of medicine or surgery at the time of its passage from its provisions requiring a diploma or certificate from the state board of examiners to entitle a person to practice such profession.—*State v. Randolph*, 23 Or. 74, 17 L. R. A. 470, 31 Pac. 201.

The authority to refuse certificates

to graduates of medical schools, not in good standing, does not extend special privileges or immunities to other schools that are determined to be in good standing.—*Iowa Eclectic Medical College Association v. Schrader* (Iowa), 20 L. R. A. 355, 55 N. W. 24.

The supreme court of New Hampshire in *State v. Pennoyer*, 65 N. H. 113, 18 Atl. 878, 5 L. R. A. 709, holds that the statute requiring records of skill and learning of practitioners of medicine, surgery, and dentistry, which excepts from its provisions persons who have practiced their professions in the place of their present residence for a certain time, and also physicians residing out of the state called into the state for consultation, or to attend patients in the regular course of business, is unconstitutional in discriminating against citizens of other states.

Note.—The weight of authority seems to be against this latter decision.

RIGHT TO PRACTICE: * The treatment of a so-called Christian Scientist, of any physical or mental ailment for compensation, whether exacted as a fee or expected as a gratuity, cannot be classed as an act of worship or a performance or a duty so as to take the case out of the statute making it unlawful to practice medicine without a certificate or diploma, as required by statute.—*State v. Buswell*, 40 Neb. 158, 24 L. R. A. 68, 58 N. W. 728.

The supreme court of Rhode Island in *State ex rel. Swarts v. Mylod*, 41 L. R. A. 428, says: "The practice of Christian Science, consisting of prayer for divine assistance, the encouragement and direction of the thoughts of the patient, without recommending or administering any drug or medicine, or giving him any course of physical treatment, is not a violation of the Gen. Law, Chap. 165, prohibiting the practice of medicine or surgery in any of its branches without a certificate from the state board of health."

Note.—The court in rendering its decision in this case comments upon the Nebraska case above cited and points out a distinction between the Nebraska statute and the Rhode Island statute in this, that Section 17 of Chapter 35 of the Nebraska act defines one as practicing medicine "who shall operate on, profess to heal, or to prescribe for or otherwise treat any physical or mental ailment of another." While the Rhode Island case is decided on the definition of the "practice of medicine" in its ordinary sense and meaning.

In *Evans v. State*, 6 Ohio N. P. 129, it was held that the Rev. St. of Ohio, designating the classes of persons who shall be regarded as practicing medicine or surgery, does not apply to per-

sons who for a fee prescribe or recommend the treatment administered by the system known as "Christian Science."

LEGISLATURE CANNOT DELEGATE POWER: The legislature cannot delegate to a board of medical examiners the power of declaring what acts shall constitute a misdemeanor, but if it could enable them to establish a crime, by rules and regulations declaring what shall constitute unprofessional conduct of a physician, no one can be convicted of such a crime in the absence of such rules and regulations: *Ex parte McNulty*, 77 Cal. 164; 19 Pac. 237.

PRACTICING WITHOUT LICENSE: A physician or surgeon, who

is employed to render service before he has procured the certificate required by the laws of this state regulating the practice of medicine, cannot recover any compensation for services rendered before the procuring of the certificate upon any contract, express or implied, the contract being illegal and against public policy.—*Gardner v. Tatum*, 81 Cal. 370, 22 Pac. 880.

A contract to pay a fee for services rendered by a physician, who is not licensed, is void in its inception, where the statute prohibits him from practicing as a physician for fee or reward.—*Puckett v. Alexander*, 102 N. C. 95; 3 L. R. A. 43, 8 S. E. 767.

Section 571. Unprofessional or Dishonorable Conduct Defined: The words unprofessional or dishonorable conduct as used in section 570 or any other section of this sub-division is hereby declared to mean:

First. The procuring or aiding or abetting in procuring a criminal abortion.

Second. The employment of what are popularly known as "capers" or "steerers" in procuring practice.

Third. The obtaining of a fee on the assurance that manifestly incurable disease can be permanently cured.

Fourth. A wilful betrayal of professional secrets to the detriment of a patient.

Fifth. All advertisements of medical business in which untruthful and improbable statements are made.

Sixth. All advertisements of any kind, of any medicine or means whereby the monthly periods of women can be regulated or the menses can be re-established if suppressed.

Seventh. Conviction of any offense involving moral turpitude.

Eighth. Habitual intemperance in the use of ardent spirits, narcotics, or stimulants.

1899, 5th Ses. p. 348, Sec. 7.

Section 572. Method of Examination: All questions upon the different branches of medicine and surgery submitted by said board to candidates for examination shall either be written or printed, or partly written and printed, and the questions on each branch shall be arranged upon separate sheets of paper and numbered consecutively. The candidate shall be supplied with a list of the questions upon but one branch or subject at a time, after completing his or her answers thereto, he or she shall be entitled to the next list of questions, and so on in like manner until said candidate shall have been examined in all the branches required. All answers to the questions thus submitted shall be in writing, upon suitable paper furnished by the board, no candidate being permitted to furnish his or her own paper for such written answers. Each list of the candidate's answers shall bear the same title as the corresponding list of questions, and

each answer shall be numbered to correspond with the question to which it refers. The questions submitted by the board to each candidate examined, together with the answers thereto, shall be placed and kept on file in the office of the secretary of said board, and shall constitute part of the records of said office.

1899, 5th Ses. p. 348, Sec. 8.

Section 573. Proceedings to Suspend or Cancel License: When complaint is made to the board, of unprofessional or dishonorable conduct, on the part of any licentiate, meriting a suspension, revocation or cancellation of his license, the board shall have power to hear evidence for and against the accused, touching such complaint, and if the board be satisfied from the evidence of the justice of such complaint, the board must institute proper proceedings in the district court in and for the county where such licentiate resides, for the suspension or revocation and cancellation of such license, and the district courts of this state are hereby vested with jurisdiction to hear and determine all such proceedings, and to suspend or revoke and cancel any license at issue in any such proceedings. The accused shall be entitled to appear in person or by counsel at every stage of any such proceeding, from the first hearing of said complaint before the board to the final disposition of the case in the district court. All costs incident to any such proceedings in the district court shall be assessed by the court as the justice of the case may require. In all such proceedings the prosecuting attorney shall appear for the board in the district court. If the board refuses to grant a license to practice, the applicant shall have the right to have the action of the board refusing such license reviewed by the district court in and for the county in which the meeting at which the license was refused was held, or such other county as may be agreed upon: *Provided*, Proceedings for such review be instituted within ten days after notice of such refusal upon the applicant.

1899, 5th Ses. p. 348, Sec. 9.

Section 574. License to be Recorded. Duty of County Recorder: Every person receiving a license shall within thirty days thereafter have the same recorded in the office of the county recorder, within the county where the licentiate intends to practice. Otherwise, said license is void. The county recorder of each county shall have, suitably prepared, a separate book of record, in which all the licenses, presented to him, shall be recorded, and on the first day of December of each year, furnish the secretary of the state board of medical examiners a list of the licenses on record in his office, and upon notice to him from said secretary of the revocation of any license on record in his office, or of the death or removal from the county, of any person whose license is on record therein, said recorder shall make a note of the fact on the page containing the record of said license, so that the records kept by said county recorder shall correspond with the records of his county, as kept by the secretary of said medical board.

1899, 5th Ses. p. 349, Sec. 11.

Section 575. Licenses to be Numbered. How Executed. Quorum: All licenses issued by the board, shall be numbered consecutively and in the order issued. Each license shall be signed by the president and secretary, and authenticated by the official seal of the board. Four members of the board shall constitute a quorum to transact business at any regular or special meeting.

1899, 5th Ses. p. 349, Sec. 12.

Section 576. Respectable or Reputable Medical College Defined: The words "respectable or reputable medical college or university in good standing" are hereby declared to mean such medical colleges or universities as are legally chartered, reputable, and in good standing within the state or county where located.

1899, 5th Ses. p. 349, Sec. 13.

Section 577. Who to be Regarded as Practicing Medicine: Any person shall be regarded as practicing medicine and surgery, or either, who shall advertise in any manner, or hold himself out to the public as a physician and surgeon, or either, in this state, or who shall investigate or diagnosticate or offer to investigate or diagnosticate any physical or mental ailment of any person with a view of relieving the same as is commonly done by physicians and surgeons, or suggest, recommend, prescribe, or direct, for the use of any person, sick, injured or deformed, any drug, medicine, means or appliance for the intended relief, palliation, or cure of the same, with the intent of receiving therefor, either directly or indirectly, any fee, gift, or compensation whatsoever: *Provided, however,* This shall not apply to dentists and registered pharmacists or midwives in the legitimate practice of their respective professions, nor to services rendered in cases of emergency, where no fee is charged.

1899, 5th Ses. p. 349, portion of Sec. 14.

Section 578. Duties of Certain Officers: It shall be the duty of the prosecuting attorneys to prosecute all violations of this sub-division within their respective counties. And in all cases of appeal to the supreme court of the state, the attorney general thereof shall represent said board. The board shall investigate all complaints of non-compliance with or violations of, the provisions of this sub-division, and bring all such cases to the notice of the proper prosecuting officers.

1899, 5th Ses. p. 350, Sec. 15.

Section 579. Not Applicable to Certain Persons: This sub-division shall not apply to commissioned medical officers of the United States army, navy, and marine hospital service in the discharge of their official duties, nor to railway surgeons in the discharge of official duties, nor to legally qualified physicians and surgeons from other states, when called in consultation with any legally qualified physician and surgeon of this state.

1899, 5th Ses. p. 350, Sec. 16.

Section 580. Expenses and Per Diem, Fund for: The members of said board shall look alone to the revenues of this

sub-division for reimbursement for actual expenses incurred in attendance upon the sessions of said board and for their per diem allowance, which shall not exceed the sum of five dollars per day each, for each day said board be in actual session.

1899, 5th Ses. p. 350, Sec. 17.

PRACTICE OF DENTISTRY.

Section 581. Prohibition Against Practice: No person who was not at the time of the passage of this act engaged in the practice of dentistry in this state, shall commence such practice unless he or she shall have obtained a certificate as hereinafter provided.

1899, 5th Ses. p. 387, Sec. 1.

Note.—The act "to insure the better qualification of practitioners of dental surgery, and to regulate the practice of dentistry in the state of Idaho," was approved February 16th, 1899, and per-

sons not engaged in practice on that date were required to obtain a certificate before commencing such practice.

Penalty for violating dentistry law: Penal Code, Secs. 4741, 4742.

Section 582. Board of Examiners, Appointment, Term, Vacancy: A board of examiners to consist of five practicing dentists of known skill and ability, is hereby created, whose duty it shall be to carry out the purposes and enforce the provisions of this sub-division. The members of said board shall be appointed by the governor from the dental profession of the state. The term for which the members of said board shall hold their offices shall be three years respectively, and until their successors shall be duly appointed and qualified. Of the first board to be appointed two shall hold office for one year, two for two years and one for three years. The term for which each shall serve to be decided by lot. In case of a vacancy occurring in said board, such vacancy shall be filled by the governor in conformity with this section.

1899, 5th Ses. p. 388, Sec. 2.

Section 583. Organization. Meetings. Quorum: Said board shall choose one of its members president, and one secretary thereof, and it shall meet at least once in each year and as much oftener and at such places as may be deemed necessary. A majority of said board, shall at all times, constitute a quorum, and the proceedings thereof shall be open to public inspection.

1899, 5th Ses. p. 388, Sec. 3.

Section 584. Persons Practicing Must Register: It shall be the duty of every person who is now engaged in the practice of dentistry in this state, to cause his or her name and residence or place of business to be registered with the said board of examiners, who shall keep a book for that purpose. The statement of every such person shall be verified under oath before a notary public, or justice of the peace. Every person who shall so register with said board as a practitioner of dentistry, shall receive a certificate to that effect, and may continue to practice as such without incurring any of the liabilities or penalties provided in this sub-division, and shall pay to the board of examiners for each registration, the fee of two dollars.

1899, 5th Ses. p. 388, Sec. 4.

Section 585. Examination of Applicants. Qualifications: Any and all persons who shall desire to appear before said board of examiners for examination shall have had three years experience in a dental office, which fact shall be established by oath before a notary public, possess a certificate from some other state board, or diploma from some legally authorized dental college. If the examination of said person or persons shall prove satisfactory to said board, the board of examiners shall issue to such persons as they shall find to possess the requisite qualifications, a certificate to that effect, in accordance with the provisions of this sub-division. Said board shall also require the holder of a diploma to furnish satisfactory evidence of his or her right to the same, and shall issue certificates to those whose examination shall prove satisfactory to said board of examiners, within ten days thereafter. All certificates issued by said board shall be signed by the officers and shall be prima facie evidence of the right of the holder to practice dentistry in the State of Idaho.

1899, 5th Ses. p. 388, Sec. 5.

EQUAL PRIVILEGES AND IMMUNITIES: A statute requiring that a person, in order to be eligible for examination for license for a dentist, shall have a diploma from some dental college in good standing, but giving the board discretion to dispense with this

in case of one who has practiced dentistry for ten years before the passage of the act, is not unconstitutional as discriminating between persons or classes, although some may not be pecuniarily able to attend a dental college.—*State v. Vandersluis*, 42 Minn. 129, 6 L. R. A. 119, 43 N. W. 789.

Section 586. Source of Revenue: In order to provide the means for carrying out and maintaining the provisions of this sub-division, the board of examiners shall charge each person applying to or appearing before them for examination for a certificate of qualifications, a fee of twenty-five dollars, which fee shall be in no case returned, but said applicant may take a second examination at the next meeting of the said board, should the applicant be rejected. Out of funds coming into possession of the board from fees so charged, and penalties received, all legitimate and necessary expenses incurred in attending the meetings of such board, shall be paid, and no part of the expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of expenses above provided for shall be held by the secretary of said board as a special fund for meeting the expenses of said board and carrying out the provisions of this sub-division, he giving such bond as the board shall from time to time direct; and said board shall make an annual report of its proceedings to the governor by December 1st, of each year, together with an account of all moneys received and disbursed by it.

1899, 5th Ses. p. 389, Sec. 7.

Section 587. Registration of Certificates: Any person who shall receive a certificate from said board to practice dentistry, shall cause his or her certificate to be registered with the county clerk of each and every county in which such person shall practice, and the county clerk shall charge for registering such certificate, a fee of one dollar. Any neglect, failure or refusal on the part of any person holding such certificate to register the same with the county clerk, as

above directed for a period of three months, shall work a forfeiture of the certificate, and no certificate, when once forfeited, shall be restored, except upon payment to the board of twenty-five dollars as a penalty of such neglect, failure or refusal.

1899, 5th Ses. p. 389, Sec. 8.

Section 588. Physicians May Extract Teeth: Nothing herein shall be so construed as to prevent any practicing physician from extracting teeth.

1899, 5th Ses. p. 389, Sec. 10.

TO PREVENT THE ADULTERATION OF VINEGAR.

Section 589. Prohibition Against Vinegar Containing Certain Substances: No person shall manufacture for sale, or knowingly offer for sale, or have in his possession with intent to sell, any vinegar found upon proper test to contain any preparation of lead, copper, sulphuric acid, or other ingredient injurious to health.

1899, 5th Ses. p. 368, Sec. 1.

Section 590. Adulterated Vinegar. False Labels: No person, by himself, his servant, or agent, or as the servant or agent of any other person, shall sell, exchange, deliver or have in his custody or possession, with intent to sell or exchange, expose or offer for sale or exchange, any adulterated vinegar, or any vinegar not in compliance with these provisions. Nor shall he label, brand or sell as cider vinegar, or as apple vinegar any vinegar not the legitimate product of pure apple juice, or not made exclusively from apple cider.

1899, 5th Ses. p. 368, Sec. 2.

Section 591. Kind and Per Cent to be Marked on Package: All manufacturers of vinegar, in the State of Idaho, and all persons who reduce or rebarrel vinegar in this state, and all persons who handle vinegar in lots of one barrel or more, are hereby required to have stenciled or marked in black letters and figures at least one inch in length on the head of each barrel or package of vinegar bought or sold by them the kind (cider, malt, grain or wine etc.) and the standard strength of the vinegar contained in the package or barrel, which shall be denoted by the per cent, of acetic acid. All vinegar except cider, shall have an acidity equivalent to the presence of not less than four and one-half per cent., by weight, of absolute acetic acid and in case of cider vinegar it shall contain not less than two per cent, by weight, of cider vinegar solids upon full evaporation over boiling water.

1899, 5th Ses. p. 368, Sec. 3.

Section 592. Reducing Strength of Vinegar: That no person or persons known as retailers who sell vinegar by the gallon shall reduce by water or other mixtures the strength of vinegar purchased and sold by them, unless he shall mark in plain figures on said package, or barrel, the strength of the vinegar still contained in said package or barrel.

1899, 5th Ses. p. 368, Sec. 4.

Section 593. Evidence of Having Vinegar for Sale :

The possession of vinegar in barrels or packages shall be prima facie evidence of having the same for sale.

1899, 5th Ses. p. 368, Sec. 5.

of this subdivision: Penal Code, Sec.

Penalty for violating the provisions 4744.

IMITATION BUTTER.

Section 594. Imitation Butter Defined: Every article, substitute, or compound, other than that which is procured from pure milk or cream therefrom, made in the semblance of butter, and designed to be used as a substitute for butter made from pure milk or its cream, is hereby declared to be imitation butter.

Provided, That the use of salt and harmless coloring matter, for coloring the product of pure milk or cream, shall not be construed to render such product an imitation.

1899, 5th Ses. p. 392, Sec. 1.

Section 595. Use of Coloring Matter Prohibited: No persons shall coat, powder, or color with annatto or any coloring matter whatever, any substance designed as a substitute for butter, whereby such substitute or products so colored or compounded shall be made to resemble butter, the product of the dairy.

No person shall combine any animal fat or vegetable oil or other substance with butter or combine therewith, or with animal fat, or vegetable oil, or combination of the two, or with either one, or other substance, or substances, for the purpose or with the effect of imparting thereto, a yellow color or any shade of yellow, so that such substitute shall resemble yellow or any shade of genuine yellow butter; nor introduce any such coloring matter or such substance or substances, into any of the articles of which the same is composed;

Provided, This shall not be construed to prohibit the use of salt, rennet or harmless coloring matter for coloring the products of pure milk, or cream from the same.

No person shall, by himself, his agent or employees, produce or manufacture any substance in imitation or semblance of natural butter; nor sell, or keep for sale, nor offer for sale, any imitation butter: made or manufactured, compounded or produced in violation of this section, whether such imitation butter shall be made or produced in this state or elsewhere.

This section shall not be construed to prohibit the manufacture and sale, under the regulations hereinafter provided, of substances designed to be used as a substitute for butter, and not manufactured or colored as herein prohibited.

1899, 5th Ses. p. 393, Sec. 2.

Section 596. Substitutes for Butter Must be Branded:

Every person who lawfully manufactures any substance designed to be used as a substitute for butter, shall mark, by branding, stamping or stenciling upon the top and side of each tub, firkin, box or other package in which said article shall be kept, and in which it shall be removed from the place where it is produced, in a clear and

durable manner, in the English language, the word "Oleomargarine," or the word "Butterine," or the words "Substitute for butter," or the words "Imitation butter," in printed letters in plain Roman type each of which shall not be less than three-quarters of an inch in length.

1899, 5th Ses. p. 393, Sec. 3.

Penalty for violating provisions of this subdivision: Penal Code, Sec.

4743.

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UNCLAIMED PROPERTY.**Section 597. Common Carrier May Retain Goods for Charges:**

When any goods, merchandise or other property has been received by any railroad or express company, or other common carrier, commission merchant, inn-keeper or warehouseman for transportation or safe keeping, and are not delivered to the owner, consignee or other authorized person, the carrier, commission merchant, inn-keeper or warehouseman, may hold or store the same with some responsible person, until the freight and all just and reasonable charges are paid.

1887 R. S. Sec. 1160.

LIABILITY OF COMMON CARRIER FOR GOODS STORED: Where a common carrier of goods is sued on his contract of carriage for a failure to safely carry and deliver the goods at the place of consignment and sets up in defense that after the arrival of the goods they were stored in a warehouse, and were there destroyed by fire without his negligence or fault, the burden of proving this defense, including the loss by fire, without his negligence or fault on his part, is on him.—*Wilson v. California R. R. Co.* 94 Cal. 166, 29 Pac. 861.

A failure of a common carrier to deliver the goods carried on demand without lawful excuse, even after the transit has ceased, and the goods have been stored in a warehouse at the place of consignment, is a breach of the carrier's original contract, for

which suit may be brought upon contract.—*Wilson v. California Central R. R. Co.* 94 Cal. 166, 29 Pac. 861; *East Tennessee V. & G. R. Co. v. Kelly*, 91 Tenn. 699, 17 L. R. A. 691, 20 S. W. 312, 314.

LIENS: An innkeeper's lien attaches to goods in the possession of his guest, though they belong to a stranger, provided the innkeeper has no notice of that fact. But no such lien attaches to goods in the possession of one who is received as a boarder, and not one received as a guest or traveler.—*Singer Manufacturing Co. v. Miller*, 52 Minn. 516, 55 N. W. 56. See note to this case in *Innkeeper's Lien*, reported in 21 L. R. A. 229.

The lien of a common carrier for freight or transportation of property is lost by the voluntary surrender of the possession.—*Wingard v. Banning*, 39 Cal. 543.

Section 598. Sale of Unclaimed Property: If no person calls for the property within four months from the receipt thereof and pays freight and charges thereon, the carrier, commission merchant, inn-keeper or warehouseman may sell such property, or so much thereof, at auction to the highest bidder, as will pay freight and charges, first having given twenty days notice of the time and place of sale to the owner, consignee, or consignor, when known, and by advertisement in a daily paper, ten days, (or if in a weekly paper, four weeks), published where such sale is to take place; and if any surplus is left after paying freight, storage, cost of advertising and other reasonable charges, the same must be paid over to the owner of such property at any time thereafter, upon demand being made therefor within sixty days after the sale.

1887 R. S. Sec. 1161.

Section 599. Unclaimed Proceeds, Where to Go: If the owner or his agent fails to demand such surplus within sixty

days of the time of such sale, then it must be paid into the county treasury, subject to the order of the owner.

1887 R. S. Sec. 1162.

Section 600. Sale of Property on Which Advances are Made: When any commission merchant or warehouseman receives on consignment produce, merchandise, or other property, and makes advances thereon for freight and charges, he may, if the same is not paid to him within four months from the date of such advances, cause the produce, merchandise, or property on which the advances were made, to be advertised and sold as provided herein.

1887 R. S. Sec. 1163.

WEIGHTS AND MEASURES.

Section 601. Standard Shall be Same as U. S.: That the standard of weights and measures in this state shall agree exactly with the standard as recognized and furnished by the United States, and shall, for the purpose of security and verification, be kept in the custody of the secretary of state,

1899, 5th Ses. p. 142, Sec. 1; 1891, 1st Ses. p. 204, Sec. 1.

cultural college: Sup. of U. S. Rev. St. (2d Ed.), p. 329.

Set of weights and measures to be furnished the governor for use of agri-

Metric system and equivalents: Rev. St. U. S. Sec. 3570 (2d Ed.).

Section 602. State Sealer, Who is; His Duties: The secretary of state shall be ex-officio state sealer of weights and measures, and shall have the care and custody of the authorized public standards of weights and measures. He shall try and prove by such standards all weights and measures, scales and beams which may belong to any county and be sent and brought to him for that purpose by the county sealer, and shall seal such, when found to be accurate, by stamping on them the letter "I" with a seal which he shall have and keep for that purpose.

1899, 5th Ses. p. 142, Sec. 2; 1891, 1st Ses. p. 204, Sec. 2.

Section 603. County Auditor to be Sealer for County: The county auditor of each county shall be the sealer of weights and measures for the county, and shall have the care and custody of the county standards. He shall procure at the expense of the county, when not already provided, a full set of weights and measures, scales and beams, which he shall cause to be tried, proved and sealed by the state standards, under the direction of the secretary of state.

1899, 5th Ses. p. 142, Sec. 3; 1891, 1st Ses. p. 205, Sec. 3.

Section 604. Secretary of State and County Auditor. Duties: The secretary of state shall authorize and instruct the county auditor of each and every county in this state in regard to testing and verifying weights and measures within said county, and shall furnish said county auditor with a copy of this sub-division, and the county auditor shall immediately post in his office due notice of his authority and readiness to act as inspector and sealer of weights and measures, and shall advertise the same in two papers in said county

for the month of January in each year: *Provided, however,* That in counties where no newspapers are published, that notices shall be posted in five public places.

1899, 5th Ses. p. 142, Sec. 4; 1891, 1st Ses. p. 205, Sec. 4.

Section 605. Weights and Measures to be Proved Twice a Year: The several county sealers shall try and prove all weights and measures scales and beams within their respective counties twice in each year, and when the same are found or made to conform to the legal standards, they shall seal and mark such weights and measures with a seal to be kept by them for that purpose.

1899, 5th Ses. p. 142, Sec. 5; 1891, 1st Ses. p. 205, Sec. 5.

Section 606. Fees for Testing: The state and county sealers of weights and measures in this state shall charge for testing or sealing any beam or scale the sum of fifty cents, and for each and every weight or measure, ten cents; for sealing and marking liquid and dry measures, if the same be a gallon or more, ten cents; if less than a gallon, five cents. They shall also be entitled to a reasonable compensation for making such weights and measures conform to the standards established herein.

1899, 5th Ses. p. 143, Sec. 6; 1891, 1st Ses. p. 205, Sec. 6.

Section 607. Cost of Procuring Standards, Etc., Paid by County: That the expenses justly chargeable to any county in this state and incurred in and immediately connected with procuring county standards of weights and measures, and noticing and advertising the same in furtherance of the provisions and intentions of this sub-division, shall, on presentation of proper and sufficient vouchers of this act, shall, on presentation of proper and sufficient vouchers to the county commissioners, be accepted and paid by said county.

1899, 5th Ses. p. 143, Sec. 7; 1891, 1st Ses. p. 206, Sec. 7.

Section 608. Liability for Using False Weight or Measure: That any person in this state who shall, after thirty days subsequent to published notice from the county sealers of weights and measures, as provided in section 604, be found using any false or fraudulent beam, scale weight or measure, and who shall fail or neglect, on written notice of the same from any person aggrieved, or in any way cognizant thereof, to have said imperfect beam, scale, weight or measure duly inspected, and by proper authority adjusted and sealed, or who shall use the same scale, weight or measure subsequent to said notice without correction or adjustment, shall be liable to an action in law, and penalty of twenty dollars for each and every offense, to be paid into the county fund.

1899, 5th Ses. p. 143, Sec. 8; 1891, 1st Ses. p. 206, Sec. 8.

Section 609. Oath of State and County Sealers: That the secretary of state and each and every county sealer of weights and measures in this state shall, before entering upon the performance of any official duties described or implied in this sub-division, take and subscribe the following oath or affirmation: "I, do swear (or affirm) that I will not seal or give any certificate of correctness

for any scale, weight or measure but such as shall as nearly as possible agree with the standard in my keeping, as the standard of the State of Idaho and of the United States, and that I will, to the best of my ability, execute and discharge truly and faithfully the trust imposed in me. So help me God." Which oath or affirmation shall be filed in the office of the secretary of state.

1899, 5th Ses. p. 143, Sec. 9; 1891, 1st Ses. p. 206, Sec. 9.

Section 610. Half Bushel Defined, Heaped Measure:

In the sale of fruits, vegetables and all other articles sold by heaped measure, one thousand two hundred and eighty-two cubic inches shall constitute a half bushel.

1899, 5th Ses. p. 143, Sec. 10; 1891, 1st Ses. p. 206, Sec. 10.

Section 611. Hundred Weight and Ton Defined:

The hundred-weight shall consist of one hundred pounds, and twenty such hundred-weights shall constitute a ton.

1899, 5th Ses. p. 143, Sec. 11; 1891, 1st Ses. p. 206, Sec. 11.

Section 612. Perch Defined: The perch is the standard of measurement of stone masonry, and contains sixteen and one-half solid feet.

1887 R. S. Sec. 1251; 1883, 12th Ses. p. 65.

Section 613. Weight Per Bushel of Certain Articles:

Whenever any of the following articles shall be contracted for or sold or delivered and no special contract or agreement shall be made to the contrary, the weight per bushel shall be as follows, to-wit: Wheat, sixty pounds; clover seed, sixty pounds; rye, or Indian corn, fifty-six pounds; oats, thirty-six pounds; barley, forty-eight pounds; buckwheat, forty-two pounds; dried apples or peaches, twenty-eight pounds; potatoes, sixty pounds; green apples or pears, forty-five pounds; flax, fifty-six pounds.

1899, 5th Ses. p. 143, Sec. 12; 1891, 1st Ses. p. 206, Sec. 12.

Section 614. Liability for Taking More or Giving Less Than Standard:

Whoever, in buying any of the articles mentioned in the preceding section, shall take any greater number of pounds thereof to the bushel, or in selling any of the said articles, shall give any less number of pounds thereof to the bushel, than is allowed by said section, with intent to gain advantage thereby, except when expressly authorized so to do by special contract or agreement to that effect, shall be liable to the party injured in double the amount of the property so wrongfully taken or not given, and ten dollars in addition thereto, to be recovered in any court of competent jurisdiction.

1899, 5th Ses. p. 143, Sec. 13; 1891, 1st Ses. p. 207, Sec. 13.

STORAGE OF GRAIN, FLOUR, WOOL, ETC.

Section 615. Warehouseman to Give Warehouse Receipt: It shall be the duty of every person keeping, controlling, managing or operating, as owner or agent or superintendent of any company or corporation, any warehouse, commission house, forward-

ing house, mill, wharf or other place where grain, flour, wool or other product is stored, to deliver to the owner of such grain, flour, wool, or other product a warehouse receipt therefor, which receipt shall bear the date of its issuance, and shall state from whom received, the number of sacks (if sacked), the number of bushels or pounds, the condition or quality of the same, and the terms and conditions upon which it is stored.

1899, 5th Ses. p. 7, Sec. 1; 1891, 1st Ses. p. 12, Sec. 1.

Lawson v. Genesee Farmers' Alliance Joint Stock Co. (Idaho), 43 Pac.

191, was an action brought under the provisions contained in this subdivision. Several of the sections are cited but none construed.

Section 616: Fraudulent and Duplicate Receipts:

No person shall issue any receipt or other vouchers as provided for in section 615 for any grain, flour, wool or other produce not actually in store at the time of issuing such receipt, or issue any receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or grade of such property, or duplicate or issue a second receipt for the same while any former receipt is outstanding for the same property or any part thereof, without writing across the face of the same the word, "duplicate."

1899, 5th Ses. p. 7, Sec. 2; 1891, 1st Ses. p. 12, Sec. 2.

Section 617. Grades Must Not be Mixed or Tampered With: No person operating any warehouse, commission house, forwarding house, mill, wharf, or other place where grain, flour, wool or other product or commodity is stored, shall mix any grain, flour, wool or other product or commodity of different grades together (or different qualities of the same grade), or deliver one grade for another, or in any way tamper with the same while in his possession or custody, and in no case mix different grades together while in store without the consent of the owner or owners thereof in writing.

1899, 5th Ses. p. 8, Sec. 3; 1891, 1st Ses. p. 12, Sec. 3.

Section 618. Warehouseman Must Not Dispose of Grain Receipted for: No person operating any warehouse, commission house, forwarding house, mill, wharf or other place of storage shall sell, hypothecate, ship, transfer or in any manner remove, or permit to be shipped, transferred or removed beyond his custody and control, any grain, flour, wool or other produce or commodity for which a receipt has been given by him as aforesaid, whether received for storing, shipping, grinding or manufacturing or other purposes, without the written assent of the holder of the receipt.

1899, 5th Ses. p. 8, Sec. 4; 1891, 1st Ses. p. 13, Sec. 4.

Section 619 Warehouse Receipts Made Negotiable:

All checks or receipts given by any person operating any warehouse, commission house, forwarding house, mill, wharf or other place of storage of grain, flour, wool or other produce or commodity stored or deposited, and all bills of lading and transportation receipts of every kind are hereby declared negotiable, and may be transferred by in-

dorsement of the party to whose order such check or receipt was given or issued, and such indorsement shall be deemed a valid transfer of the commodity represented by such receipt and may be made either in blank or to the order of another.

1899, 5th Ses. p. 8, Sec. 5; 1891, 1st Ses. p. 13, Sec. 5.

Section 620. Warehouseman to Deliver Goods, When: On the presentation of the receipt given by any person operating any warehouse, commission house, forwarding house, mill, wharf or any other place of storage for any grain, flour wool or other produce or commodity, and on payment of all the charges due thereon the owner shall be entitled to the immediate possession of the commodity named in such receipt; and it shall be the duty of such warehouseman, wharfinger, millman or other bailee to deliver such commodity to the owner of such receipt.

1899, 5th Ses. p. 8, Sec. 6; 1891, 1st Ses. p. 13, Sec. 6.

Section 621. Action for Damages by Person Aggrieved: Every person or persons aggrieved by a violation of these provisions may have and maintain an action at law against the person or persons, corporation or corporations, violating the same, to recover all damages, immediate or consequential, which he or they may have sustained by reason of such violation, before any court of competent jurisdiction, whether such person shall have been convicted under this sub-division or not.

1899, 5th Ses. p. 8, portion of Sec. 7, Violation of provisions is a felony:
1891, 1st Ses. p. 13, portion of Sec. 7. Penal Code, Sec. 4998.

DAYS WORK ON PUBLIC WORKS.

Section 622. Eight Hours a Lawful Days Work: That not more than eight hours actual work shall constitute a lawful day's work on all state, county and municipal works: *Provided*, That this shall not be construed as meaning any labor except manual labor, employed by the day, and nothing herein contained shall apply to state, county or municipal officials, or to any employees of the state, or any county or municipality, who are paid monthly or yearly salaries.

1899, 5th Ses. p. 113, Sec. 1; 1891, 1st Ses. p. 169, Sec. 1.

Section 623. Bids for Work Must Declare Eight Hour Basis: That any and all bids for work on public buildings or other public works of the state, or of any county or municipality of the state, shall expressly state and declare that all laborers and mechanics employed by the day on such buildings or public works, or in the preparation of materials to be directly used for or in the construction of such buildings or public works, shall be employed on the basis of eight hours as a lawful day's work.

1899, 5th Ses. p. 113, Sec. 2; 1891, 1st Ses. p. 170, Sec. 2.

MONEY AND RATE OF INTEREST.

Section 624. Money of Account Defined: The money

of account in this state is the dollar, cent, and mill, and all public accounts and the proceedings of all courts in relation to money must be kept and expressed in money of the above denominations.

1887 R. S. Sec. 1260; 1879, 10th Ses. p. 7.

Section 625. Other Denominations, Reduced in Suits: The above provisions do not in any manner affect any demand expressed in money of another denomination, but such demand in any suit or proceeding affecting the same must be reduced to the above denominations.

1887 R. S. Sec. 1261; 1879, 10th Ses. p. 7, Sec. 2.

A contract made for the payment of money and interest thereon in gold coin of the United States of America, of the present standard of weight and fineness is in conflict with the provision of an act passed by the second session of the legislature of the state of Idaho, providing "That from and after this act shall take effect all obligations of debt, judgment or execution stated in terms of dollars to be paid in money,

if not dischargable in United States legal tender notes, shall be payable in either the standard silver or gold coin authorized by the congress of the United States, all stipulations in the contract to the contrary notwithstanding."—2d Ses. Laws of Idaho, p. 78; Bannock County v. C. Bunting & Co. (Idaho), 37 Pac. 277.

Note.—The act on which this decision was based was repealed by act approved January 24, 1895, 3d Ses. p. 6.

Section 626. Judgments Must be in Dollars and Cents: In all judgments rendered by any court for any debt, damages, or costs, and in all executions issued thereon, the amount must be computed, as near as may be, in dollars and cents, rejecting small fractions; and no judgment or other proceeding is erroneous for such omission.

1887 R. S. Sec. 1262; 1879, 10th Ses. p. 7, Sec. 3.

VALUATION OF PROPERTY: When the aggregate of a column of figures is preceded by a dollar mark, the result must follow that each item of such column is also dollars, although not preceded by such mark; and this on the well-established maxim in mathematics, that the whole is equal to all its parts.—*People v. Owyhee Lumber Company*, 1 Idaho, 420.

A judgment was sustained in the absence of any dollar or cent mark, because the two right-hand figures were

separated from the others by a short perpendicular line. — *Gutzwiller v. Crowe*, 32 Minn. 70, 19 N. W. 344; see also *State v. Schwartz*, 64 Wis. 432, 25 N. W. 417.

INTEREST ON JUDGMENT: Where the supreme court reverses a judgment for a certain sum with interest from a certain time and directs judgment for a larger sum with interest, the allowance of interest is to be made from the same date as the original judgment.—*Everett v. Gores*, 92 Wis. 527, 66 N. W. 616.

Section 627. Rate of Interest: When there is no express contract in writing fixing a different rate of interest, interest is allowed at the rate of seven cents on the hundred by the year on: 1. Money due by express contract. 2. Money after the same becomes due. 3. Money lent. 4. Money due on the judgment of any competent court or tribunal. 5. Money received to the use of another and retained beyond a reasonable time without the owner's consent, express or implied. 6. Money due on the settlement of mutual accounts from the date the balance is ascertained. 7. Money due upon open accounts after three months from the date of the last item.

1899, 5th Ses. p. 315; 1897, 4th Ses. p. 95, amending Laws of 1887, R. S. Sec. 1263.

RULE WHERE NO EXPRESS CONTRACT: Contract being silent on the subject of the rate of interest the rate is governed by statute.—*Cummings v. Howard*, 63 Cal. 503. The law does not tolerate the payment of more than legal interest except by express agreement in writing to pay the same.—*Crosby v. McDermitt*, 7 Cal. 146. Where a statute establishes the legal rate of interest, and also provides that any other rate can be collected when the agreement therefor is in writing, only the legal rate can be verbally contracted for.—*Stickler v. Giles*, 9 Wash. 147, 37 Pac. 293. An attorney who buys his client's note at less than its face value, and then collects from the client its full value, is liable for interest, on the excess of the amount received by him over the amount paid, from the date of its receipt.—*Andrews v. Wilber* (Cal), 41 Pac. 790.

JUDGMENTS: All money judgments, whether of the state or federal courts, bear interest from date.—*Booth v. Ableman*, 20 Wis. 602.

LIABILITY OF SURETY ON JUDGMENT: A surety who recovers against a co-surety for contribution is entitled to only the legal rate of interest, regardless of the rate contracted to be paid.—*Bushnell v. Bushnell*, 77 Wis. 435, 9 L. R. A. 411, 46 N. W. 442.

ACCOUNTING: In the absence of an agreement to pay interest and of any accounting between the parties, interest does not run as a general rule.—*Taylor v. Peterson*, 1 Idaho, 513.

MUTUAL ACCOUNTS: Accounts purchased from third persons are not mutual accounts so as to prevent the running of interest upon them.—*Pengra v. Wheeler*, 24 Or. 532, 21 L. R. A. 726, 34 Pac. 354.

UNASCERTAINED BALANCE: IN

an action on a contract, under which there has been no settlement, and the balance due on which is unascertained, interest cannot be collected.—*Vietti v. Nesbitt*, 22 Nev. 390, 41 Pac. 151.

WHAT IS A STATEMENT OF ACCOUNT: Where the debtor tells the person in whose hands an account has been placed for collection, without objecting thereto, that he will pay the same, it is a stating of account between the parties, and the account bears interest from that date.—*Stickler v. Giles*, 9 Wash. 147, 37 Pac. 293.

EFFECT OF CHANGE OF LAW: Where the rate of interest is changed by law after contracts are entered into and no rate of interest is stipulated therein, they bear the changed rate from the time the law took effect.—*Firemen's F. Ins. Co. v. Western R. Co.* (Ill.), 44 N. E. 746; *Richardson v. Campbell*, 27 Neb. 644, 11 L. R. A. 189, 43 N. W. 405. And upon the judgment rendered prior to the passage of the act reducing the rate of interest, the judgment creditor is entitled to interest at the old rate up to the time the new act went into effect, but only to the reduced rate thereafter.—*O'Brien v. Young*, 95 N. Y. 428. But in Colorado it is held that it is not in the power of the legislature to alter the rate of interest to which a creditor is entitled upon his pre-existing judgment.—*Rockwell v. Butler*, 17 Colo. 290, 17 L. R. A. 611, 29 Pac. 458; see note on *Change of Interest on Judgment* in 17 L. R. A. 612. The rate of interest recoverable as damages for the non-payment of money is that fixed by law during the period of default. If the law has changed the rate during that period, the computation must be varied accordingly.—*State v. Guenther*, 87 Wis. 673, 58 N. W. 1106.

Section 628. Contract Rate Limited to 12 Per Cent.:

Parties may agree in writing for the payment of any rate of interest on money due or to become due on any contract not to exceed the sum of 12 per cent. per annum; any judgment rendered on such contract shall bear interest at the rate of seven per cent. per annum until satisfied.

1899, 5th Ses. p. 316; 1897, 4th Ses. p. 95, amending Laws of 1887; R. S. Sec. 1264.

USURIOUS INTEREST: A contract of loan, in which the debtor agrees to pay monthly \$6, which is applicable to the satisfaction of the principal debt, and \$7.15 interest monthly, upon the debt (\$650) until the entire debt is paid, is equivalent to an interest charge of 26 2-5 per cent. per annum upon the principal of the loan, average time, and is usurious.—*Fidelity Sav. Ass'n v. Shea et al.* (Idaho), 55 Pac. 1022. Un-

der the laws of Idaho, building and loan associations cannot charge, directly or indirectly, usurious interest on loans.—*Fidelity Sav. Ass'n v. Shea et al.* (Idaho), 55 Pac. 1022.

This section is cited in *Portneuf Lodge, etc., v. Western Loan & Savings Co.* 59 Pac. 362.

Interest: A contract for interest at 10 per cent. per annum, provided the note is paid at maturity, but, if not then paid, interest to be paid at 12 per cent. from date of note, is a proper contract for interest, the increase not

being a penalty.—*Finger v. McCaughey*, 114 Cal. 64, 45 Pac. 1004; *Thompson v. Gorner*, 104 Cal. 168, 37 Pac. 900; *Wortman v. Vorhies*, 14 Wash. 152, 44 Pac. 129; *Pawtucket Mut. Fire Ins. Co. v. Landers* (Kan.), 47 Pac. 621. Interest follows a contract, according to the law in existence at the time and place of the contract, or of the performance of it, and a subsequent change in the legal rate of interest does not affect the contract.—*Aguirre v. Packard*, 14 Cal. 171. Where a note, payable in thirty days, provides for interest at 10 per cent. per month, but is silent as to the rate after maturity, the payee is entitled only to the legal

rate after maturity.—*Clark v. Russell*, 1 Colo. 52. Where the conditions of a note and collateral mortgage as to interest are different, the interest is governed by the conditions of the note.—*Keys v. Lardner*, 55 Kan. 331, 40 Pac. 644. Interest cannot be recovered on money voluntarily placed in the hands of another for illegal speculation in stocks.—*Baldwin v. Zadig*, 104 Cal. 594, 38 Pac. 363. Where a promissory note provides that in case of non-payment at maturity it shall bear interest at a certain rate until paid, interest should be computed upon it from its date, and not from the time of default.—*Main v. Casserly*, 67 Cal. 127, 7 Pac. 426.

Section 629. Compound Interest Not Allowed: Compound interest is not allowed, but a debtor may agree in writing to pay interest upon interest over-due at the date of such agreement.

1887 R. S. Sec. 1265; 1879, 10th Ses. p. 8, Sec. 6.

Cleveland et ux v. Western Loan & Trust Co. (Idaho), 63 Pac. 885.

COMPOUND INTEREST, USURY: Coupon notes given for the interest of the principal debt, which, by their

terms, draw interest after maturity, are in contravention of this section forbidding compound interest, and are usurious, and in such case no recovery can be had for any interest or cost.—*Vermont Loan & Trust Co. v. Hoffman* (Idaho), 49 Pac. 314.

Section 630. Usury,² Penalty for: If it is ascertained in any suit brought on any contract, that a rate of interest has been contracted for greater than is herein authorized, either directly or indirectly, in money or in property, such contract works a forfeiture of ten cents on the hundred by the year, and at that rate, upon the amount of such contract, to the school fund of the county in which the suit is brought, and the plaintiff must have judgment for the principal sum less all payments of principal or interest theretofore made and without interest or cost. The court must render judgment in said action for ten per cent. per annum upon the entire principal of said contract, against the defendant in favor of the state for the use of the school fund of the county, whether the unlawful interest is contested or not; and in no case where unlawful interest is contracted for, must the plaintiff have judgment for more than the principal sum less the payments already made, whether the unlawful interest be incorporated with the principal sum or not. But no indorsee in due course of negotiable paper, is affected by any usury exacted by any former holder of such paper unless he have actual notice of the usury previous to his purchase; but in such case the judgment above provided in favor of the school fund must be entered against the drawer or maker, if a party to the action, and he may recover back the usury paid from the party who received the same.

1887 R. S. Sec. 1266.

Cleveland et ux v. Western Loan & Trust Co. (Idaho), 63 Pac. 885.

SUITS ON USURIOUS CONTRACTS: The provisions of this section direct the kind of a judgment to be entered in actions on a usurious contract, but do not prescribe any par-

ticular action for such contracts.—*Portneuf Lodge, etc., v. Western Loan & Savings Co.* (Idaho), 59 Pac. 362.

When it is ascertained by the court that an action has been brought on a contract which provides for illegal interest, it is the duty of the court to render judgment as directed by said

section, and, if it fails to do so the proper procedure on behalf of the state is to move within six months after the adjournment of the term at which such judgment was rendered, for the modification of the erroneous judgment, and, in case such motion is denied, an appeal lies to this court.—*State v. Eves et al.* (Idaho), 53 Pac. 543. In a suit upon a usurious contract, it is error to allow the plaintiff, under the stipulations of a mortgage securing the debt, an attorney fee, as such fee is no part of the debt. Rehearing denied.—*Fidelity Sav. Ass'n v. Shea et al.* (Idaho), 55 Pac. 1022. Plaintiff brought action upon a usurious contract. Judgment was entered upon stipulations of parties in favor of plaintiff, from which defendant appealed. Held, that the judgment so entered, being in contravention of the usury laws of the state, the same was erroneous.—*Ocobock v. Nixon et al.* (Idaho), 57 Pac. 309. One who comes into Idaho, and loans money upon real estate there situated, cannot evade and cheat the usury laws of the state by stipulating in the contract of loan that the contract shall be tested and its validity determined by the laws of another state; such stipulation being against public policy, and not binding upon the debtor.—*Fidelity Sav. Ass'n v. Shea et al.* (Idaho), 55 Pac. 1022. Under the laws of this state, an action may be maintained on a usurious contract for the recovery of the principal sum loaned. Such a contract is not void.—*Portneuf Lodge, etc., v. Western Loan & Savings Co.* (Idaho), 59 Pac. 362.

CONTRACTS DECLARED NOT USURIOUS: The provisions of this section are not applicable to the state in a suit brought by the state to foreclose a mortgage taken to secure the payment of a loan made from the per-

manent school fund of the state.—*State v. Fitzpatrick* (Idaho), 51 Pac. 112. M. applied to plaintiff by a written application, wherein he appointed plaintiff his agent for that purpose, to procure for him a loan of \$600 for a period of five years, with interest at the rate of 8 per cent. per annum, payable annually. For his services in procuring said loan, plaintiff charged M. a commission of 10 per cent. upon the sum so procured and loaned; M. and his wife giving to plaintiff their notes and mortgage to secure the sum. Held, that such charge for commission in the absence of any proof showing that plaintiff was acting as the agent of the party from whom the loan was secured, or that such party was interested in or received any part of the commission so charged, did not come within the provisions of this chapter, and was not usurious.—*Cornwell v. McCoy* (Idaho), 55 Pac. 240.

USURY, WHAT CONSTITUTES, CONFLICT OF LAWS: Where A., residing in Idaho, gives B. a promissory note signed in blank and B. goes to Utah and there procures money on such note, giving, under power of attorney from A., a mortgage upon A.'s property in Idaho as collateral security, the fact that the rate of interest charged on such note is greater than the Idaho legal rate, will not render such contract usurious, it appearing that the rate is not usurious in Utah; such contract being a Utah contract. *Winters v. Swift*, 2 Idaho 60, 3 Pac. 15. Evidence examined and found not to support the findings of the court that the notes and mortgage sued on were in violation of the usury laws of Idaho.—*See Cornwell v. McCoy* (Idaho), 55 Pac. 240, and *Same v. Carter*, 55 Pac. 1100; *Cornwell v. Urton et ux.* (Idaho), 55 Pac. 294.

PUBLIC PRINTING.

Section 631. Public Printing to be Done Within the State: All printing, binding and stationery work executed for or on behalf of the state, and for which the state contracts or becomes in any way responsible shall be executed within the State of Idaho, except as provided in section 633.

1899, 5th Ses. p. 183, Sec. 1; 1893, 2d Ses. p. 71, Sec. 1.

Section 632. County Printing to be Done Within the County: All county printing, binding and stationery work, executed for or on behalf of the several counties throughout the state for which the said counties contract or become in any way responsible, shall be executed within the county for which said work is done, when there are practicable facilities within the said county for ex-

executing the same, but when it shall become necessary, from want of proper facilities, to execute the work without the said county, then the same shall be executed at some place within the State of Idaho, except as provided in section 633.

1899, 5th Ses. p. 183, Sec. 2; 1893, 2d Ses. p. 71, Sec. 2.

Section 633. May be Done Outside County or State.

When: Whenever it shall be established that any charge for printing, binding, or stationery work is in excess of the charge usually made to private individuals for the same kind and quality of work, then the state or county officer or officers having such work in charge shall have power to have such work done outside of said county or state, but nothing herein shall be construed to oblige any of said officers to accept any unsatisfactory work.

1899, 5th Ses. p. 183, Sec. 3; 1893, 2d Ses. p. 72, Sec. 3.

Section 634. Contracts Void, When: All contracts entered into in violation of these provisions shall be void.

1899, 5th Ses. p. 183, Sec. 4; 1893, 2d Ses. p. 72, Sec. 4.

LABELS AND TRADE MARKS.

Section 635. Unlawful to Counterfeit Label or Trade

Mark: Whenever any person, or any association or union of workmen, has heretofore adopted or used, or shall hereafter adopt or use any label, trade mark, term, design, device or form of advertisement, for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, or other products of labor, as having been made, manufactured, produced, prepared, packed or put on sale, by such person, or association, or union of workmen or by a member or members of such association or union, it shall be unlawful to counterfeit or imitate such label, trade mark, term, design, device or form of advertisement, or to use, sell, offer for sale, or in any way utter, or circulate any counterfeit, or imitation of any such label, trade mark, term, design, device or form of advertisement.

1899, 5th Ses. p. 316, Sec. 1; 1897, 4th Ses. p. 123, Sec. 1.

Penalty for violating this section: Penal Code, Sec. 4950.

TRADE MARKS, WHAT CONSTITUTE: Any word or phrase used in circulars, price lists, or advertisements to designate a manufactured article, but not placed upon the article, does not constitute a trade mark.—*Candee, Swan & Co. v. Deere & Co.* 54 Ill. 439, 5 Am. Rep. 125.

TRADE MARK, WHAT WILL BE PROTECTED: Where the words used are generic terms such as "Sarsaparilla and Iron" they cannot be appropriated as trade marks, and they do not give the persons appropriating them the right to their exclusive use.—*Schmitt v. Brieg*, 100 Cal. 672, 35 Pac. 623. In *Candee, Swan & Co. v. Deere*

& Co. 54 Ill. 439, 5 Am. Rep. 125, it was held that the term "Moline" is generic, being the name of a place and is not susceptible to exclusive use as a trade mark.

PROTECTION OF TRADE UNION LABELS AND TRADE MARKS: A labor union may be protected by appropriate state legislation in the use of a label for the designation of articles manufactured by its members and the use of the label prohibited to persons other than members of the union, or persons who employ such members. A statute providing for the protection of trade marks adopted by associations or unions of workmen is not void as class legislation or as granting special privileges or immunities.—*State v. Bishop*, 128 Mo. 373, 29 L. R. A. 200, 31 S. W. 9.

TRADE MARKS CALCULATED TO DECEIVE: The exclusive use of a trade mark which contains a false representation calculated to deceive the public as to the manufacture of the article, and the place where it is manufactured will not be protected by courts of equity.—*Joseph v. Macowsky*, 96 Cal. 518, 19 L. R. A. 53,

31 Pac. 914. Material misrepresentation in the use of a trade mark or label will defeat the right of the owner to relief in equity against an infringement or imitation by others.—*Prince Mfg. Co. v. Prince's Metallic Paint Co.* 135 N. Y. 24, 17 L. R. A. 129, 31 N. E. 990; see extensive notes to these cases as reported in the L. R. A.

Section 636. Trade Mark or Design Filed for Record, Where? Certificate. Evidence: Every such person, association or union, that has heretofore adopted or used, or shall hereafter, adopt or use, a label, trade mark, term, design, device or form of advertisement, as provided in section 635, may file the same for record in the office of the secretary of state, by leaving two copies, counterparts or facsimiles thereof, with said secretary and by filing therewith, a sworn application specifying the name or names of the person, association or union on whose behalf such label, trade mark, term, design, device or form of advertisement shall be filed; the class of merchandise and a description of the goods to which it has been or is intended to be, appropriated, stating that the party so filing or on whose behalf such label, trade mark, term, design, device, or form, of advertisement shall be filed, has the right to the use of the same; that no other person, firm, association, union or corporation, has a right to such use, either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the facsimiles or counterparts filed therewith are true and correct. There shall be paid for such filing and recording a fee of one dollar. Said secretary shall deliver to such person, association, or union, so filing or causing to be filed any such label, trade mark, term, design, device or form of advertisement, so many duly attested certificates of the recording of the same as such person, association, or union may apply for, for each of which certificates said secretary shall receive a fee of one dollar. Any such certificate of record shall, in all suits and prosecutions under this sub-division be sufficient proof of the adoption of such label, trade mark, term, design, device or form of advertisement. Said secretary of state shall not record for any person, union, or association, any label, trade mark, term, design, device or form of advertisement that would probably be mistaken for any label, trade mark, term, design, device, or form of advertisement theretofore filed by, or on behalf of any other person, union, or association; and any person who shall for himself or on behalf of any other person, association or union procure the filing of any label, trade mark, term, design or form of advertisement in the office of the secretary of state under the provisions of this sub-division, by making any false or fraudulent representations or declarations, verbally or in writing or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by, or on behalf of the party injured thereby, in any court having jurisdiction.

1899, 5th Ses. p. 317, Sec. 3, and portion of 4; 1897, 4th Ses. p. 124, Sec. 3,

and portion of 4.

Penalties relating to trade marks.

Penal Code, Secs. 4950 to 4952 and 4999 to 5001.

Section 637. Suits to Restrain Counterfeiting and Use: Every such person, association or union adopting or using a label, trade mark, term, design, device or form of advertisement as aforesaid may proceed by suit, to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, and all courts of competent jurisdiction shall grant injunctions to restrain such manufacture and may award the complainant in any such suit, damages resulting from such manufacture, use, sale or display, as may be by the said court, deemed just and reasonable, and shall require the defendants to pay to such persons, association, or union, all profits derived from such wrongful manufacture, use, display or sale; and such court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such cause be delivered to an officer of the court, or to the complainant to be destroyed; and in all cases where such association or union is not incorporated, suits may be commenced, and prosecuted by an officer or members of such association or union on behalf of, and for the use of such association or union.

1899, 5th Ses. p. 318, Sec. 5, and portion of 6; 1897, 4th Ses. p. 126, Sec. 5, and portion of 6.

INFRINGEMENT BY SIMILARITY OF NAMES OF ARTICLES: On this subject see *Munroe v. Tousey* (New York), 14 L. R. A. 245, and note.

Where a person with the intent to divert to himself the business of others, prepares and sells an article similar to that manufactured and sold by

such others, and in doing so uses labels and devices so closely resembling those used by the latter as to lead purchasers using ordinary care to believe they are purchasing the article, are liable to such manufacturers in damages, and will be enjoined from using such labels and devices, though these do not constitute a trade mark.—*Schmidt v. Brieg*, 100 Cal. 672, 35 Pac. 623.

PROTECTION OF MECHANICS, LABORERS AND MATERIAL MEN.

Section 638. Duty of Certain Persons to Publish Notice: It shall be the duty of any person, persons, company or corporation, engaged in working any mine, mines, mining premises or in developing any mining claim or claims, whether quartz or placer, or in the running of any tunnel, or in the erection or repair of any building or other structure or in the construction of any canal, ditch, railroad, wagon road or aqueduct, in every case where mechanics or laborers are employed in or about the properties above mentioned, to make, record and publish a statement under oath, setting forth such data as are provided in section 639.

1899, 5th Ses. p. 365, Sec. 1.

Section 639. What notice Must Contain: The statement required by the preceding section shall contain the following data:

First. The name or names of the owner or owners of the mine, mines, mining claim or premises, tunnel, building, canal, ditch, railroad, wagon road, aqueduct or other structure upon which work is being done or upon which it is intended to begin work;

Second. The name or names of the person, persons, company

or corporation engaged in or who contemplates engaging in work upon any of the properties or structures mentioned herein;

Third. The conditions under which said person, persons, company or corporation is prosecuting said work, whether as owner, agent, lessee, contractor, sub-contractor, contemplative purchaser or lien-holder;

Fourth. The principal office of said person, persons, company or corporation, and if a corporation the state or county where incorporated and the agent in this state on whom service may be had;

Fifth. The day of the week or month when payment of the laborers, mechanics and material men will be made and the place where said payments will be made.

Sixth. A statement of all mortgages and liens against the property on which work is being done, with the amount of each of said incumbrances and whether or not the same is due.

1899, 5th Ses. p. 365, Sec. 2.

Section 640. Notices to be Recorded and Posted:

Any person, persons, company or corporation who shall engage in working, developing or prospecting any mine, mines, mining claims or premises, or in running any tunnel or in repairing or erecting any building, or in constructing any canal, ditch, railroad, wagon road, aqueduct or other structure, and shall employ any mechanics or laborers in prosecuting said work, shall, before employing said mechanics or laborers or any of them, make and file for record in the office of the recorder of the county in which said labor is being done and if there be a district recorder, then also in the office of said district recorder of the district where said mechanics or laborers are employed, a statement under oath containing the data required by section 639, and at the same time shall post similar statements in his or its office, at the place where payment of wages is to be made, and in a public and conspicuous place where it can be easily seen at or near the place where said mechanics or laborers are employed.

1899, 5th Ses. p. 366, Secs. 3 and 4.

Penalty for violating provisions of this and two preceding sections: Penal Code, Sec. 4860.

Section 3 of the original act approved March 14th, 1899, read as follows:

It shall be the duty of any person, persons, company or corporation, employing mechanics or laborers upon any mine, mines, mining claim or premises, tunnel, building, canal, ditch, railroad, wagon road, aqueduct or other structure at the time this act shall take effect, to file for record in the office of the recorder of the county in which said labor is being done and if there

be a district recorder, then also in the office of said district recorder of the district where said mechanics or laborers are employed, within ten days after this act shall take effect, a statement under oath, containing the data required by section 2 of this act; said person, persons, company or corporation, shall also, within ten days after this act shall take effect, post similar statements in his or its office, at the place where payment of wages is to be made, and in a public and conspicuous place where it can be easily seen at or near the place where said mechanics or laborers are employed.

STATE LABOR COMMISSION.

Section 641. Commission to Investigate Strike, Lockout, Etc.: It shall be the duty of the state labor commission,

upon receiving authentic information, in any manner, of the existence of any strike, lockout, or other labor complication in this state, effecting the labor or employment of fifty persons or more, to go to the place where such complication exists, put themselves into communication with the parties to the controversy, and offer them services as mediators between them: *Provided*, That in all cases where less than fifty persons are on strike or lockout, the commission may, in their discretion, act as though such number of strikers consisted of fifty or more persons. If they shall not succeed in effecting an amicable adjustment of the controversy in that way, they shall endeavor to induce the parties to submit their differences to arbitration, either under the provisions of this sub-division or otherwise as they may elect.

1901, 6th Ses. p. 67, Sec. 4.

Section 642. Commission and District Judge Constitute Board of Arbitrators: For the purpose of arbitration, under this sub-division, the labor commissioners and the judge of the district court of the district in which the business in relation to which the controversy shall arise, shall have been carried on, shall constitute a board of arbitrators, to which shall be added, if the parties so agree, two other members, one to be named by the employer, and the other by the employees in the arbitration agreement. If the parties to the controversy are a railroad company, and the employees of the company engaged in the running of trains, any terminal within this state, of the road, or any division thereof, may be taken and treated as the location of the business within the terms of this section, for the purpose of giving jurisdiction to the judge of the district court, to act as a member of the board of arbitration.

1901, 6th Ses. p. 67, Sec. 5.

Section 643. Agreement to Arbitrate: An agreement to enter into arbitration under this sub-division, shall be in writing and shall state the issue to be submitted and decided, and shall have the effect of an agreement, by the parties, to abide by, and perform the award.

Such an agreement may be signed by the employer, as an individual firm, or corporation, as the case may be, and execution of the agreement, in the name of the employer, by any agent or representative of such employer, then and therefore in control or management of the business or department of business, in relation to which the controversy shall have arisen, shall bind the employer. On the part of the employees the agreement may be signed by them, in their own person, not less than two-thirds of those concerned in the controversy, signing, or it may be signed by a committee, by them appointed. Such committee may be created by election at a meeting of the employees concerned in the controversy, at which not less than two-thirds of such employees shall be present, which election, and the fact of the presence of the required number of employees at the meeting, shall be evidenced by the affidavit of the chairman and secretary of such meeting, attached to the arbitration agreement. If the employees, concerned in the con-

troverſy, or any of them ſhall be members of any labor union or working men's ſociety, they may be repreſented in the execution of ſaid arbitration agreement by officers or committeemen of the union or ſociety designated by it, in any manner conformable to its uſual methods of tranſacting buſineſs, and others of the employees, repreſented by committee as hereinbefore provided.

1901, 6th Ses. p. 68, Sec. 6.

**Section 644. Commissioner Absent, Judge to Ap-
point Pro Tem.:** If upon any occaſion calling for the preſence and intervention of the labor commissioners, under this ſub-
diſiſion, one of ſaid commissioners ſhall be preſent and the other ab-
ſent, the judge of the diſtrict court of the diſtrict in which the diſ-
pute ſhall have ariſen, as defined in ſection 642, ſhall upon the ap-
plication of the commissioners preſent, appoint a commissioner pro
tem, in the place of the abſent commissioner and ſuch commissioner
pro tem ſhall exerciſe all the powers of a commissioner under this ſub-
diſiſion until the termination of the duties of the commiſſion with re-
ſpect to the particular controverſy, upon the occaſion of which the ap-
pointment ſhall have been made, and ſhall receive the ſame pay and
allowances provided by this ſub-diſiſion, for the other commissioners.
Such commissioner pro tem ſhall repreſent and be affiliated with the
ſame intereſts as the abſent commissioner.

1901, 6th Ses. p. 68, Sec. 7.

Section 645. Oath of Arbitrators. Proceedings:
Before entering upon their duties, the arbitrators ſhall take and ſub-
ſcribe an oath or affirmation to the effect that they will honeſtly and
impartially perform their duties as arbitrators, and a juſt and fair
award render, to the beſt of their ability. The ſitting of the arbitrat-
ors ſhall be in the court room of the diſtrict court or ſuch other place
as ſhall be provided by the county commissioners, of the county in
which the hearing is had. The diſtrict judge ſhall be the preſiding
member of the board. He ſhall have power to iſſue subpoenas for wit-
neſſes who do not appear voluntarily, directed to the ſheriff of the
county, whoſe duty it ſhall be to ſerve the ſame, without delay. He
ſhall have power to adminiſter oaths and affirmations to witneſſes,
enforce order, and direct and control examinations.

The proceedings ſhall be informal in character, but in general ac-
cordance with the practice governing the diſtrict courts in the trial
of civil caſes. All queſtions of practice, or queſtions relating to the
admiſſion of evidence, ſhall be decided by the preſiding member of the
board ſummarily and without extended argument. The ſittings ſhall
be open and public. If five members are ſitting as ſuch board, three
members of the board, agreeing, ſhall have power to make an
award, otherwiſe two. The ſecretary of the commiſſion ſhall attend the
ſitting and make a record of the proceedings in ſhorthand, but ſhall
transcribe ſo much thereof only as the commiſſion ſhall direct.

1901, 6th Ses. p. 69, Sec. 8.

[Section 646. Award to be in Writing: The arbi-
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trators shall make their award in writing and deliver the same with the arbitration agreement and their oath as arbitrators, to the clerk of the district court of the judicial district in which the hearing was had, and deliver a copy of the award to the employer and a copy to the first signer of the arbitration agreement on the part of the employees. A copy of all the papers shall be preserved by the commission.

1901, 6th Ses. p. 69, Sec. 9.

Section 647. Proceedings Upon Award: The clerk of the district court shall record the papers, delivered to him, as directed in the last preceding section, in the order book of the district court. Any person, who was a party to the arbitration proceedings, may present to the district court of the county in which the hearing was had, or the judge thereof, in vacation, a verified petition referring to the proceedings and the record of them, in the order book, and showing that said award has not been complied with, stating by whom and in what respect it has been disobeyed.

And thereupon, the court or judge thereof, in vacation, shall grant a rule against the party or parties so charged, to show cause within five days, why said award has not been obeyed, which shall be served by the sheriff as other process. Upon return made to the rule, the judge or court, if in session, shall hear and determine the questions presented and make such order or orders, directed to the parties before him, in personam, as shall give just effect to the award. Disobedience by any party to such proceedings of any order so made, shall be deemed a contempt of the court, and may be punished accordingly. But such punishment shall not extend to imprisonment except in case of wilful disobedience. In all proceedings under this section, the award shall be regarded as presumptively binding upon the employer and all employees who were parties to the controversy submitted to arbitration, which presumption shall be overcome only by proof of dissent from the submission delivered to the arbitrators, or one of them, in writing, before the commencement of the hearing.

1901, 6th Ses. p. 69, Sec. 10.

Section 648. Rules and Regulations: The labor commission with the advice and assistance of the attorney general of the state, which he is hereby required to render, may make rules and regulations respecting proceedings in arbitration, under this subdivision, not inconsistent therewith or the law, including forms, and cause the same to be printed and furnished to all persons applying therefor, and all arbitration proceedings hereunder shall thereafter conform to such rules and regulations.

1901, 6th Ses. p. 70, Sec. 11.

Section 649. To Arbitrate When Requested by Parties: Any employer and his employees, not less than twenty-five in number, between whom differences exist which have not resulted in any open rupture or strike, may, of their own motion, apply to the labor commission, for arbitration of their differences, and upon

the execution of an arbitration agreement, as hereinbefore provided, a board of arbitrators shall be organized in the manner hereinbefore provided, and the arbitration shall take place and the award be rendered, recorded and enforced, in the same manner as in arbitrations under the provisions of the preceding sections.

1901, 6th Ses. p. 70, Sec. 12.

Section 650. Proceedings When Judge Unable to Act: In all cases requiring the attendance of a judge of the district court as a member of the arbitration board, such duty shall have precedence over any other business pending in his court, and if necessary for prompt transaction of such other business, it shall be his duty to appoint the district judge of an adjoining district to sit in the district court in his place during the pendency of such arbitration, and such appointee shall receive the same compensation for his services as is now allowed by law to judges appointed to sit in case of change of judge in civil actions. In case the judge of the district court, whose duty it shall become to sit upon any board of arbitrators, shall be at the time actually engaged in a trial which cannot be interrupted without loss and injury to the parties, and which will, in his opinion, continue for more than three days to come, or is disabled from acting by sickness or otherwise, it shall be the duty of such judge to call in and appoint the district judge of an adjoining district, to sit upon such board of arbitrators, and such appointed judge shall have the same power and perform the same duties as member of the board of arbitration as are vested in and charged upon the district judge regularly sitting, and he shall receive the same compensation, now provided by law, to a judge sitting by appointment, upon a change of judge in civil cases, to be paid in the same way.

1901, 6th Ses. p. 71, Sec. 13.

Section 651. Attorney General to Attend When; Subpœnas; Fees: If the parties to any such labor controversy shall have failed at the end of five days, after the first communication of said labor commission to them, to adjust their differences amicably, or to agree to submit the same to arbitration, it shall be the duty of the labor commission to proceed at once to investigate the facts attending the disagreement.

In this investigation, the commission shall be entitled, upon request, to the presenece and assistance of the attorney general of the state, in person or by deputy, whose duty it is hereby made to attend, without delay, upon request, by letter or telegram, from the commission. For the purpose of such investigation, the commissioners shall have power to issue subpoenas and each of the commissioners shall have power to administer oaths and affirmations. Such subpoena shall be under seal of the commission, and signed by the secretary of the commission, or a member of it, and shall command the attendance of the person or persons named in it, at a time and place named, which subpoena may be served and returned as other process by any sheriff or constable in the state.

In case of disobedience of any such subpoena or the refusal of any witness to testify, the district court having jurisdiction or the judge thereof, during vacation, shall, upon the application of the labor commission, grant a rule against the disobeying person or persons or the person refusing to testify, to show cause, forthwith why he or they should not obey such subpoena or testify as required by the commission, or be adjudged guilty of contempt, and in such proceedings, such court, or the judge thereof, in vacation, shall be empowered to compel obedience to such subpoena, as in the case of subpoena issued under the order of and by the authority of the court, or to compel a witness to testify as witnesses in court are compelled to testify. But no person shall be required to attend as a witness, at any place outside the county of his residence. Witnesses called by the labor commission, under this section, shall be paid \$2.00 per diem fees out of the expense fund provided, if such payment is claimed at the time of their examination.

1901, 6th Ses. p. 71, Sec. 14.

Section 652. Commission to Report to Governor:

Upon the completion of the investigation authorized by the last preceding section, the labor commission shall forthwith report the facts thereby disclosed, affecting the merits of the controversy, in a brief and condensed form to the governor.

1901, 6th Ses. p. 72, Sec. 15.

Section 653. Statements Before Commission not to be Disclosed, When:

Any employer shall be entitled, in his response to the inquiries made of him by the commission in the investigation provided for in the last two preceding sections, to submit in writing to the commissioner a statement of any facts material to the inquiry, the publication of which would be likely to be injurious to his business, and the facts so stated shall be taken and held as confidential, and shall not be disclosed in the report or otherwise.

1901, 6th Ses. p. 72, Sec. 16.

Section 654. Compensation: Said commissioners shall receive a compensation of six dollars each per diem, for the time actually expended, and actual and necessary traveling and hotel expenses, while absent from home in the performance of duty, and each of the two members of the board of arbitration, chosen by the parties under the provisions hereof, shall receive the same compensation for the days occupied in service, upon the board. The attorney general or his deputy shall receive his necessary and actual traveling expenses while absent from home in the service of the commission. Such compensation and expenses shall be paid by the state treasurer upon warrants drawn by the auditor upon itemized and verified accounts of time spent and expenses paid. All such accounts, except those of the commissioners, shall be certified as correct by the commissioners, or one of them, and the accounts of the commissioners shall be certified by the secretary of the commission.

The arbitrations and investigations provided for in this sub-division shall be conducted with all reasonable promptness and dispatch, and

no member of any board of arbitration shall be allowed payment for more than fifteen days' service, in any one arbitration, and no commissioner shall be allowed payment for more than ten days' service in the making of the investigation provided for in section 651 and sections following.

1901, 6th Ses. p. 72, Sec. 17.

EMPLOYMENT OF ALIENS.

Section 655. Employment of Aliens Prohibited: No person not a citizen of the United States, or who has not declared his intentions to become such, or who is not eligible to become such, shall be employed upon any state or municipal works; nor shall any such person be employed by any contractor to work on any public works of the state or any municipality: *Provided*, That any state prisoner may be employed within the state prison grounds and as provided in section 3, article 13, of the constitution.

1899, 5th Ses. p. 71, Sec. 3; 1891, 1st Ses. p. 233, Sec. 1.

Section 656. Corporations Prohibited from Employing Aliens: No county government or municipal or private corporation organized under the laws of this state, or organized under the laws of another state or territory or in a foreign country and doing business in this state, shall give employment in any way to any alien who has failed, neglected, or refused, prior to the time such employment is given, to become naturalized or declare his intention to become a citizen of the United States.

1899, 5th Ses. p. 71, Sec. 5; 1897, 4th Ses. p. 5, Sec. 1. Violation of section, penalty: Penal Code, Sec. 4857.

Section 657. Aliens to be Discharged Upon Complaint Made: Whenever employment has been innocently given to any alien by any county government, municipal or private corporation mentioned in section 655, and complaint shall be made in writing by any person to the officer of the county government, or municipal corporation, or general manager, superintendent, foreman, or other agent of the private corporation, having charge or superintendency of the labor of such alien employee, that such an employee is an alien he shall forthwith discharge such employee from employment unless said employee shall produce his declaration to become a citizen, or his certificate of naturalization, or a duly certified copy thereof.

1899, 5th Ses. p. 71, Sec. 6; 1897, 4th Ses. p. 5, Sec. 2. Violations of section, penalty: Penal Code, Sec. 4857.

EMPLOYMENT BUREAU.

Section 658. Agent to Obtain Permission of County Commissioners: No person or persons shall carry on, hold, or keep any labor agency, or bureau of employment without first having obtained written permission of the county commissioners of the county wherein said agency or bureau is to be located.

1901, 6th Ses. p. 131, Sec. 1.

Section 659. Agent to Give Bond: Before any per-

son or persons shall be permitted to open, keep, or conduct any labor agency or bureau of employment within the jurisdiction of said county, he shall furnish a bond with good and solvent security in favor of the chairman of said county commissioners in the full sum and amount of five thousand dollars (\$5,000), conditioned that he shall well and truly carry out the purposes for which said agency shall have been established, and that he shall pay all such damages which may result from his or their actions as such agent or agents, keeper or keepers of said bureau of employment and that any one who may have been injured or damaged by said agent or agents by any act done in furtherance of said business or by fraud or misrepresentations of said agents or keepers, shall have a right to sue for the recovery of such damages before any court of competent jurisdiction.

1901, 6th Ses. p. 131, Sec. 2.

Penalty for violation: Penal Code, Sec. 5113.

CHAPTER XVII.

REGULATIONS RELATING TO DOMESTIC ANIMALS.

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Section 660. Stock Drivers, Stock Growers and Live Stock Defined: Every person, whether owner or employee, who drives or brings, or assists in driving or bringing any cattle, horses, mules, asses, sheep, or hogs, through or into this state, is deemed a stock drover. Every person who owns any cattle, horses, mules, asses, sheep or hogs, in this state, and is engaged in the business of breeding, growing, or raising the same for profit, is deemed a stock-grower; and all cattle, horses, mules, asses, sheep, and hogs are deemed live stock.

1887 R. S. Sec. 1170; 1881, 11th Ses. p. 295, Sec. 1.

Section 661. Stock Growers Must Use but One Brand

for Each Class: Every stock-grower in this state must use one, and only one brand and mark for cattle: *Provided*, That any stock-grower may use a smaller sized brand to brand his cattle on the horns, of the same kind as his flesh brand; one and only one brand or mark for horses, mules, and asses; one and only one brand or mark for sheep; and one and only one brand or mark for hogs; which brands and marks must be placed upon some conspicuous part of the animal branded or marked: *Provided*, That nothing in this chapter forbids the use of one brand or mark for all or several of the four classes of live stock hereinbefore enumerated in this section; but a stock-grower may, at his option, use a different brand and mark for each of the aforesaid four classes of live stock.

1887 R. S. Sec. 1171; 1881, 11th Ses. p. 295, Sec. 2.

Section 662. Record of Purchased Brand. How Increase Branded: In all cases of the purchase of an entire band of live stock by any resident stock-grower, together with the sole right to the brand of the party selling said live stock, it is lawful for the party purchasing such band and brand to have such purchased brand recorded in his own name, upon presentation to the county recorder of the county where such brand is recorded, of a duly authenticated bill of sale of such brand and band of live stock, but it is not lawful for any stock-grower to use more than one of these brands or marks, on the increase of his band of live stock. But the provisions of this section must not be so construed as to release any stock drover from the obligations to brand or mark all live stock driven through any portion of this state, as hereinafter provided.

1887 R. S. Sec. 1172; 1881, 11th Ses. p. 296, Sec. 3.

Section 663. Stock Grower Must Record Brands and Marks: Every stock-grower must record, in the office of the county recorder of his county, a full and correct description of his brands and marks, describing particularly on what part of the animal to be marked or branded, the brand or mark is to be placed. He may also, at his discretion, record the same in the office of the county recorder of any other county or counties within the state.

1887 R. S. Sec. 1173; 1881, 11th Ses. p. 296, Sec. 4. which the brand is placed is as important as the characters used.—*Priemuth v. State*, 1 Tex. App. 481.

PLACE WHERE BRANDED: The particular portion of the animal upon

Section 664. Only Recorded Brand Must be Used. When Need Not be Branded: No stock-grower in this state must use any other brands or marks than the brands and marks recorded, as provided for in section 663, which must in all cases be placed on the part of the animal designated in the description recorded. When there is already a brand on that particular place, then as near thereto as possible: *Provided*, That stock kept for use need not be branded unless the owner or owners choose to brand them.

1887 R. S. Sec. 1174; 1881, 11th Ses. p. 296, Sec. 5.

Section 665. Ear Marks: Any stock-grower in this state may select an earmark, and after recording the same as hereinbefore

provided, may use the same in marking his live stock. Such mark must be made by cutting or shaping the ear or ears of the animal so marked; but in no case must the person so marking the animal, cut off more than one-third of the ear, or cut an ear on both sides to a point.

1887 R. S. Sec. 1175; 1881, 11th Ses. p. 296, Sec. 7.

Section 666: Brands Must Not be Duplicated: No stock-grower must have recorded or use, and no county recorder must record, any brand or mark which has been previously selected or recorded by any person or persons in his county, unless the same has been abandoned, and notice of the abandonment duly recorded by the county recorder of his county, except as provided in section 662.

1887 R. S. Sec. 1176; 1881, 11th Ses. p. 297, Sec. 8.

Section 667. Partnership Brands: Partners in stock-growing may adopt and use partnership brands or marks, in which case they must select, record and use the same in the manner provided for the individual stock-growers, or they may adopt and use the individual brand or mark of any individual member of the partnership duly selected and recorded as provided in this chapter.

1887 R. S. Sec. 1177; 1881, 11th Ses. p. 297, Sec. 9.

Section 668. Defacing or Counterfeiting Brands: No stock-grower or other person in this state shall change, conceal, deface, disfigure, or obliterate any brand or mark previously branded, impressed or marked on any head of live stock, or put his own, or any other brand upon or over any part of any brand previously branded upon any head of live stock, and no person shall mark or use any counterfeit of any brand or mark provided for in this chapter.

1887 R. S. Sec. 1178; 1881, 11th Ses. Penalty for violation of this Sec.:
p. 297, Sec. 10. Penal Code, Sec. 5057.

Section 669. Recorded Brand Prima Facie Evidence of Ownership: In all civil suits, or in any criminal proceeding, where the title of any live stock is involved, the brand or mark on any such animal is prima facie evidence of the ownership of the person whose brand or mark it may be: *Provided*, That such brand has been duly recorded as required by this chapter. Proof of the right of any person to use such brand or mark may be made by a copy of the record of the same, certified by the county recorder of any county in which the same is recorded.

1887 R. S. Sec. 1179; 1881, 11th Ses. of a stolen animal, the title being es-
p. 297, Sec. 11. tablished by other testimony.—Poage
UNRECORDED BRAND AS EVIDENCE: An unrecorded brand is ad-
missible to aid in proving the identity v. State, 43 Tex. 454; Johnson v. State,
1 Tex. App. 333.

Section 670. Road Brand. Duty of Stock Drover: It is the duty of every stock drover to select and use a road brand for all live stock driven or moved through or into this state by him or by his assistance or direction, which road brand must be plainly and distinctly branded on some conspicuous part of each animal; and it is the duty of every such stock drover or his assistants, each day to

carefully search through and examine his herd or drove after driving or moving them over any portion of this state, and separate from and drive and keep away from his herd or drove all live stock not belonging thereto and not branded with his road brand: *Provided*, That any drover may drive the stock of other drovers with different brands; but he must have written authority from the owner to drive said stock

1887 R. S. Sec. 1180; 1881, 11th Ses. p. 297, Sec. 12.

Section 671. Stray Stock. Duty of Stock Grower:

Any stock-grower or his employees may drive any stock that he finds herding with any stock belonging to him or under his control on the range to the nearest suitable corral that can be obtained, and there separate it from the stock of said stock-grower, and such stock must be by him driven, or caused to be driven back to or near the range from which such stock was driven

1887 R. S. Sec. 1131, portion of Sec.; 1881, 11th Ses. p. 298, portion of Sec. 13.

Section 672. Liability of Stock Drover for Driving Property of Another:

Any stock drover or other person engaged in driving or moving any herd or drove of live stock through this state, who, without the owner's consent, drives or moves, or assists in driving or moving any herd of live stock, the property of another person, away from its usual or accustomed range in this state, shall be liable for damages in a civil action in any court of competent jurisdiction in this state by the party injured, for double the value of each head of live stock so as aforesaid driven or moved away, together with costs of suit; and the party injured may at the commencement of such civil action, or during the pendency thereof, have such herd or drove of live stock or such number of live stock thereof as are sufficient, attached, seized, and held as security for all damages and costs that may be recovered in such action.

1887 R. S. Sec. 1182; 1881, 11th Ses. p. 298, Sec. 14.

Penalty for violation of this section: Penal Code, Sec. 5055.

Section 673. Liability of Drover for Trespass: Any person owning or having charge of any herd or drove of live stock, who drives or moves the same into or through any county in this state, in which the owner thereof is not a resident or land owner, and where the land is owned or is occupied and improved, must prevent such herd or drove from mixing with the live stock belonging in said county and must also prevent such herd or drove from trespassing on land in the possession of any actual settler, and used by him for grazing purposes, or for the growing of grain, hay, or other crops, or injuring any ditches owned or used by such settler. If any owner or person in charge of any such herd or drove of live stock wilfully or negligently injures any resident of this state by driving or moving such herd or drove of live stock from any public highway, and herding or grazing the same on land occupied and improved by any settler in possession of the same, he shall be liable

in a civil action to the party injured for the damage by him sustained.

1887 R. S. Sec. 1183; 1881, 11th Ses. p. 299, Sec. 15.

Penalty for violating this section: Penal Code, Sec. 5056.

ENCLOSURE, COMMON LAW RULE: The rule of the common law, that every man's land is enclosed, either by a material fence or by an ideal invisible boundary, and that every unwarrantable entry thereon by a person or his cattle is a trespass by breaking his close, was not founded on an arbitrary regulation, but was considered as incidental to the ownership. It is in force in all places where the right of private dominion over

things real is recognized; it attaches to the ownership of property.—*Bileu v. Paisley*, 18 Or. 47, 4 L. R. A. 840, 21 Pac. 934; see note to this case as reported in L. R. A.

Note.—Section 727 requires the person who claims damages to show that he had a lawful fence around his enclosure, but under the provisions of this section, it would seem that a greater responsibility is placed upon the owner of the live stock by reason of his not being a resident of the county in which the trespass is committed.

FENCES.

Section 674. Lawful Fence Defined: A lawful fence, except as hereinafter provided, must be not less than four and a half feet high, and the bottom board, rail, pole or wire must not be more than twenty inches above the ground, and the space between the top and bottom board, rail, pole or wire must be well divided.

1887 R. S. Sec. 1300.

Section 675. Fences of Different Materials. What Deemed Lawful: Lawful fences are described as follows:

1st. If made of stone, four and one-half feet high, two feet base and one foot thick on top.

2d. If it be a worm fence, the rails must be well laid and at least four and one-half feet high.

3d. If made of posts with boards, rails or poles, the posts must be well set in the ground and not more than eight feet apart, with not less than three six-inch boards or rails or poles not less than two and one-half inches in diameter at the small end; if four poles are used they must not be less than two inches in diameter at the small end, and if five or more poles are used they shall not be less than one and one-half inches in diameter at the small end. The top board, rail or pole must not be less than four and a half feet from the ground, the spaces well divided, and the boards, rails or poles securely fastened to the posts; if poles not less than three inches in diameter at the small end are used, the posts may be set twelve feet apart.

4th. If wire be used in the construction of fences, the posts must not be more than twenty-four feet apart, set substantially in the ground, and two substantial stays must be placed between the posts, each stay eight feet from the posts, and all wires must be securely fastened to each post and stay with not less than three barbed or four plain wires. The bottom wire shall be not more than twenty inches from the ground, and the other wires a proper distance apart. The wires must be well stretched and the fence not less than four and one-half feet high.

5th. If made in whole or in part of brush, ditch, pickets, hedge or

any other materials, the fence to be lawful must be equal in strength and capacity to turn stock, to the fence above described.

6th. All fences in good repair, of suitable material, and of every description, and all creeks, brooks, rivers, sloughs, ponds, bluffs, hills or mountains, that present a suitable obstruction to stock are deemed a lawful fence.

1901, 6th Ses. p. 267, Sec. 1.

Section 676. Partition Fences, Erection of: When two or more persons own land adjoining which is inclosed by one fence, and it becomes necessary for the protection of the rights and interests of one party that a partition fence be made between them, the other or others when notified, must proceed to erect, or cause to be erected, one-half of such partition fence; said fence to be erected on or as near as practicable, the line of said land. And if, after notice given in writing, either party fails to erect and complete within six months time thereafter, one-half of such fence, the party giving the notice may proceed to erect the entire partition fence and collect by law one-half of the costs of such fence from the other party, and he has a lien upon the land thus partitioned.

1887 R. S. Sec. 1302; 1885, 13th Ses. p. 118.

In an action brought under the statute to recover one half the value of a partition fence, and to foreclose a lien therefor, it is not necessary for the

plaintiff to show that other fences which have been adopted by the defendant in completing his enclosure are lawful fences.—*Meade v. Watson*, 67 Cal. 591, 8 Pac. 311.

Section 677. Duty of Co-Terminous Land Owners: Each co-terminous land owner must construct and keep in repair a just proportion of the line fence between their respective tracts of land, unless the owner of one of said tracts chooses to allow his land to lie uninclosed.

1887 R. S. Sec. 1303; compiled from laws of 1885, 13th Ses. p. 118.

BOTH PARTIES TO KEEP FENCE IN REPAIR: Where both parties are under obligations to keep a parti-

tion fence in repair, one cannot charge the other with negligence for a failure to do so.—*Pitzner v. Shinnick*, 41 Wis. 676

Section 678. Liability of Co-Terminous Owner on Enclosing His Land: When one of such adjoining proprietors has allowed his land to lie uninclosed, and afterwards incloses it, he owes, and is indebted to such adjoining owner one-half the value of any division fence owned by the other, used by him in forming such inclosure; and each must thereafter keep one-half of such fence in repair.

1887 R. S. Sec. 1304; compiled from laws of 1885, 13th Ses. p. 118.

Section 679. Disagreement; Viewers to Decide. Effect of Decision: If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained or kept in repair by each respectively, either party may apply, on five days notice, to a justice of the peace of the township, if there be one, if not, to the probate judge, for the appointment of

three viewers who may examine witnesses on oath, and view the premises and must determine:

1. If the fence is owned by one proprietor, how much the other must pay as his proportion of the value;

2. If the fence or the whole thereof is not built, which part thereof must afterwards be built and kept in repair by each. The determination of the viewers must be reduced to writing and signed by them, and filed in the office of the county recorder, and such determination is conclusive upon the parties. If any part of such determination consists in fixing the value of a fence for which one party is to pay the other a proportion also fixed, such proportion must be paid within thirty days after notice of such determination and if not so paid may be recovered by action in any court of competent jurisdiction. The viewers are entitled to a fee of three dollars each, one-half to be paid by each proprietor.

1887 R. S. Sec. 1305; compiled from laws of 1885, 13th Ses. p. 118.

AWARD IS CONCLUSIVE: The award of the viewers is conclusive as to the amount of the fence to be maintained by the two adjoining owners.—

Gray v. Edrington, 29 Kan. 208. And in the absence of fraud or mistake, the findings of the viewers as to the value of the fence, is final.—Oxborough v. Boesser, 40 Minn. 1, 13 N. W. 906.

Section 680. Partition Fence May Not be Removed:

When one party ceases to improve his land, or opens his inclosure, he must not take away any part of the partition fence belonging to him and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure will, within two months after the same is ascertained, pay therefor such sum as is agreed upon by the parties, or, if failing to agree, then such sum as may be adjudged by viewers as provided in the last section; nor must such partition fence be removed when by so doing it will expose to destruction any crops in such inclosures.

1887 R. S. Sec. 1306; 1885, 13th Ses. p. 118, Sec. 4.

Section 681. Fence Built by Mistake; Right to Remove: When any person has built, by mistake and in good faith, a fence on the land of another, such person or his successor in interest may, within one year from the time of discovering such mistake, go upon the land of such other person and remove such fence, doing no unnecessary damage thereby.

1887 R. S. Sec. 1307; 1885, 13th Ses. p. 119, Sec. 5.

GOOD FAITH, WHAT IS: Whether or not a person who, in building a division fence between his land and that of the adjoining owner, has placed it by mistake on the latter's land, first caused a survey of the division line to

be made by the county surveyor, after notice to such owner, is not the sole test of the exercise by him of good faith in the matter which will permit him to recover the materials which he put into the fence.—Hobbs v. Clark, 53 Ark. 411, 9 L. R. A. 526, 14 S. W. 652.

Section 682. Fence Built by Mistake Not to be Disturbed, When: The occupant or owner of land whereon a fence has been built by mistake must not throw down or in any manner disturb such fence during the period within which the person who

built it is authorized by the last section to remove it, when by so doing he will expose any crop to destruction.

1887 R. S. Sec. 1308; 1885, 13th Ses. p. 119, Sec. 6.

Section 683. Party Building Fence May Require Survey: The person building such fence, or the occupant or owner of the land whereon the same is built, may upon notice to the other party, whenever doubts arise about the location of such fence, require the surveyor of the county to run the division line between their respective lands, and the line so run is sufficient notice to the party making the mistake, as to require him to remove such fence within one year thereafter.

1887 R. S. Sec. 1309; 1885, 13th Ses. p. 119, Sec. 7.

Section 684. When Party May Remove Partition Fence: In all cases where the inclosures of two or more persons are divided by a partition fence of any kind, and either of the parties thinks proper to vacate his part of such inclosure, or to make a lane of passage between such adjoining inclosures, such person is at liberty to remove his share or part of such partition fence, on giving six months notice in writing of such intention to the party owning or occupying the adjoining inclosure, or to his agent, if such party is not a resident of the county.

1887 R. S. Sec. 1310; 1885, 13th Ses. p. 119, Sec. 8.

Section 685. Gates Through Partition Fences. Any Person May Use: In all cases where a partition fence exists between parties, and a gate is established for passage through their lands, any other person may pass through such gate free, doing no unnecessary damage, and if any such person leave any such gate open, or does other damage to the premises, he is liable to the party aggrieved in double damages.

1887 R. S. Sec. 1311; 1885, 13th Ses. p. 119, Sec. 9.

PROTECTION OF STOCK GROWERS.

Section 686. Persons Slaughtering Cattle to Keep Record: Any person engaged in the business of slaughtering cattle, must keep at his place of business a book in which he must enter daily the number and class of cattle slaughtered, the name of the person or persons from whom said cattle were purchased, and the marks and brands of such cattle. Said book must be kept ready at all times for inspection by any person who may desire to examine the same.

1887 R. S. Sec. 1195; 1877, 9th Se s. p. 36.

Section 687. Persons Not Butchers Must Preserve Hide Thirty Days: An person not regularly engaged in the business of slaughtering cattle, who at any time slaughters any cattle must retain in his possession the hide taken off said cattle with the ears attached thereto, without any alteration of the marks on the same, or any disfiguration of the brand for the period of thirty days, and any owner of cattle may within the period of time herein men-

tioned demand an exhibition of the hide or hides of any cattle so killed or slaughtered by the person so killing the same, or by any other person for whose use and benefit such animal or animals were killed, and upon such demand being made he must produce said hide or hides for inspection.

1887 R. S. Sec. 1196; 1877, 9th Ses. Penalty for violating this and preceding section: Penal Code, Sec. 5058.
p. 36.

Section 688. Animal Dying of Contagious Disease to be Buried by Owner: It shall be the duty of any person or persons, company or corporation, owning any hog, cattle, horse, or other domestic animal, which dies from any infectious or contagious disease, to cremate, or cause to be cremated, bury or cause to be buried, at a depth of not less than three feet, the carcass of said dead animal, within twelve hours after the owner of said animal has knowledge of the death thereof.

1901, 6th Ses. p. 24, Sec. 1.

Penalty: Penal Code, Sec. 4731.

SHEEP.

Section 689. Not to be Herded on Lands of Other Persons: It is not lawful for any person owning or having charge of sheep to herd the same, or permit them to be herded on the land or possessory claims of other persons.

1887 R. S. portion of Sec. 1210.

Section 690. Liability for Trespass: The owner or the agents of such owner of sheep violating the provisions of the last section, on complaint of the party or parties injured before any justice of the peace for the precinct where either of the interested parties may reside, is liable to the party injured for all damages sustained; and if the trespass be repeated; is liable to the party injured for the second and every subsequent offense in double the amount of damages sustained.

1887 R. S. Sec. 1211.

Section 691. When Treated as Estrays: When the owner or the agent of such owner of sheep found trespassing upon the land or possessory claims of another is unknown to the party injured by such trespass, all sheep so trespassing may be treated as estrays.

1887 R. S. portion of Sec. 1212.

Section 692. Sheep Inspector. General Reference: The creation of the office of state sheep inspector, and the manner of appointment are designated in Title II, Chapter VI, sections 175 and 176 of this Code.

New section by Commission.

Section 693. Powers and Duties of State Sheep Inspector: It shall be the duty of the state sheep inspector to have general supervision over his deputies appointed under the provisions of this sub-division, and to aid, counsel and advise with such deputies, and generally to enforce the provisions of this sub-division.

The said sheep inspector shall have the same power within the entire state as the deputies appointed by him have in their respective districts, and where the services of the state sheep inspector are demanded in a county or district other than that in which he resides, to settle differences between sheep men and any deputy, it shall be the duty of the said state sheep inspector to go and adjust such differences, and the said party or parties demanding such services shall pay the actual traveling expenses of said state sheep inspector.

1901, 6th Ses. p. 143, last part Sec. 2.

Section 694. Creation of Districts and Appointment of Deputies:

Such state sheep inspector shall have power, and it shall be his duty to divide each county or counties into districts, and to appoint for such districts one or more deputy inspectors, as in his judgment may seem necessary. Such deputies shall hold office until their successors are appointed and qualified, unless sooner removed by the state sheep inspector. They shall be practical sheep men who, before entering into the duties of their office, shall take an oath of office as required of county officers, and shall give a bond to the State of Idaho in the penal sum of five thousand dollars, conditioned for the faithful performance of the duties of such deputy sheep inspector, such bond to be approved by the state sheep inspector and be placed on file in his office. Such deputy shall be subject to removal by the state sheep inspector, when in his judgment, it shall seem necessary.

1901, 6th Ses. p. 143, Sec. 4.

Section 695. Inspection Lines: It shall be the further duty of the state sheep inspector, with the assistance of the deputies appointed by him in the several districts, to create what shall be known as, "inspection lines," in each county or district where it shall be deemed necessary between the summer and winter ranges. And shall cause a notice containing a careful description of said "inspection line," in each district, to be published for three weeks in some newspaper published in said district and upon the last publication thereof, due notice of the location of such inspection line shall be deemed to have been given. The expense of such publication shall be a charge against the county, where such notice is given, payable as other charges: *Provided*, That this section shall not be so construed as to prohibit other stock crossing said inspection lines, and occupying the range inclosed by said lines.

1901, 6th Ses. p. 143, Sec. 5.

Penalty for crossing line without inspection: Penal Code, Sec. 5066.

Section 696. Inspector and Deputies May Administer Oaths:

The state sheep inspector and his deputies shall have the power to administer oath so far as the same may be necessary in the proper performance of their duties.

1899, 5th Ses. p. 353; 1901, 6th Ses. p. 144, Sec. 7.

Penalty for false swearing: Penal Code, Sec. 4646.

Section 997. Deputy to Examine Sheep in His Dis-

trict, When: It shall be the duty of at least one deputy inspector in each county or district to be designated by the state sheep inspector, to personally examine all sheep and bands of sheep in his county or district, between the first day of March and the first day of June of each year and again between the first day of September and the first day of November of each year; and the state sheep inspector may, at any time he deems necessary, order an inspection in any county or district, and to the owners and persons in charge of herds found to be clean, the deputy shall issue a certificate stating such fact, which certificate shall permit such herds to pass into and through any and all counties in this state so long as they shall remain clean and free from disease; such deputy is required to examine any band or bands of sheep at any time that he may be called upon to do so at the request of one or more sheep growers, in writing, stating that such sheep are affected or infected with some infectious or contagious disease, and that there is imminent and immediate danger of the spread of such disease: *Provided*, That upon examination such sheep are found to be clean, the person or persons making such complaint shall pay the expenses of such examination which may be recovered in a civil action therefor, but, in case such inspector, upon making such examination, finds said sheep diseased, he shall forthwith issue his order quarantining said sheep, and they shall be dealt with as provided in section 698.

1901, 6th Ses. p. 144, Sec. 8.

Section 698. Diseased Sheep to be Dipped: Whenever upon an examination of any bands or herds of sheep kept or herded in any county of the State of Idaho, the deputy sheep inspector of such county or district thereof shall find such sheep or any portion of them, affected or infected with the scab or scabbies, or any other infectious or contagious disease, the entire band or herd shall be considered as infected and treated as such and he shall immediately quarantine the same and forthwith notify the owner or person in charge of said sheep, in writing, to dip said sheep twice for said disease within the period of thirty days from said notice; the first dipping not to exceed fifteen days from the receipt of said notice and the second dipping to be within the period of from eight to twelve days from the first dipping, and also during such period to keep such sheep free from contact with other sheep by such means as he shall specify until after the second dipping: *Provided*, That in case the owner or controller of any sheep which, on account of their condition, or by reason of the inclemency of the weather, shall, in the opinion of such owner or controller, be unfit or unsafe to dip: such deputy inspector may authorize such owner or controller to place such sheep in a corral, field, or feed yard, where said sheep shall be kept from contact with other sheep until such time as they are in condition to dip. Such owner or controller shall be responsible for any and all damages which may be incurred by reason of such sheep coming in contact with sound sheep.

1901, 6th Ses. p. 145, Sec. 9.

Section 699. Deputy to Superintend Dipping: Expenses, How paid: Such deputy sheep inspector, or competent persons appointed by him, shall superintend all dipping and shall have full and complete power to enforce and designate the strength, heat and length of time such sheep shall be in the bath; and all expenses incurred in so doing, including a compensation of five dollars for every day or part of a day in which said deputy sheep inspector or persons appointed by him may be engaged in dipping said sheep, shall become and is hereby made a first lien upon said sheep, and, if the same is not paid within ten days he shall sell so many of said sheep as may be necessary to realize sufficient money to pay said sum due him, together with the costs and charges of the sale including five dollars per day for each day he holds said sheep.

Such sale shall be made and conducted in the same manner as sales of personal property on execution out of the district court.

1901, 6th Ses. p. 146, Sec. 10.

Sale on execution: Code Civil Proc.
Sec. 3544 et seq.

Section 700. Owners Not Required to Dip, When: No person, persons, company, corporation or association within the State of Idaho shall be required to dip his or their band or bands of ewes, or any part of them, within ten days of the commencing of lambing, and fifty days thereafter of any year, but such sheep when found to be infected shall be held in quarantine and separate and apart from sound sheep, and the owner, owners or controllers thereof shall be responsible for all damages as stated in this chapter, to be recovered as herein provided for.

1901, 6th Ses. p. 146, Sec. 12.

Section 701. Treatment While in Quarantine: It shall also be the duty of said deputy sheep inspector to require the owner, owners or controllers of sheep while held in quarantine during the period mentioned in the above section to spot or hand dress all sheep in their band or bands that show any scab or any contagious or infectious disease, with some reliable medicine; and such deputy sheep inspector shall have the power to enforce such hand dressing or spotting during the period above referred to the same as he has power to enforce dipping at any other period of the year.

1901, 6th Ses. p. 147, Sec. 13.

Section 702. Failure of Owner to Dip; Duty of Deputy: Should any owner or person in charge of any sheep found to be infected upon examination by the deputy sheep inspector, fail or refuse to dip said sheep or should do so in an improper manner, it shall be the duty of said deputy sheep inspector to seize said sheep and dip the same. And when the same shall have been dipped, he shall notify the owner or person in charge of the amount of the costs, charges and expenses due from the same. If such owner or person in charge shall neglect or refuse for the period of ten days after receiving said notice to pay the same together with all further costs, charges and expenses of holding said sheep, it shall be the duty of the said deputy to sell so many of said sheep as may be necessary to

pay the same and all costs and expenses of said sale. Such sale shall be made and conducted as sales of personal property on execution out of the district court.

1901, 6th Ses. p. 147, Sec. 14.

Sale on execution: Code Civil Proc.
Sec. 3544 et seq.

Section 703. Per Diem of Deputy; Paid by Owners:

The deputy sheep inspectors appointed in the several counties or districts, shall receive five dollars per day for every day or part of a day spent in the performance of his duty, to be paid by the owner or owners of the sheep examined and to be enforced as a lien against the sheep so examined as provided in section 702.

1901, 6th Ses. p. 147, Sec. 15.

Section 704. Duty of Owner of Sheep Coming from Another State:

Any person, persons, company, corporation or association, or any agent or employee of any person, persons, company, corporation or association, who shall drive or herd, or cause to be driven or herded, or shall bring or cause to be brought into the State of Idaho, any sheep from any other state, shall immediately, upon crossing the state line of Idaho, notify the deputy sheep inspector of the county or district where said sheep crossed the state line, and before he shall proceed further than two miles from the said state line into the State of Idaho, he shall make an application, in writing, to such deputy inspector for the inspection of said sheep. Said application must be served on the deputy of that county or district in person or left at his place of residence or by registered letter. Said notice must state the time and place said sheep crossed the state line, and the locality from whence they came, and must give the name and residence of the owner of said sheep and the name of the herder or controller, the number of sheep and the brands of said sheep, and for each band of sheep of 3000 head or less, the party making the application shall deposit with the deputy inspector the sum of ten (\$10) dollars to cover the cost of inspection of said sheep.

Any deputy sheep inspector on receiving such notice, shall at once proceed to inspect said sheep as set forth in the application, and if, upon inspection, said deputy inspector shall deem it necessary or advisable so to do to prevent or avoid infection therefrom, he shall cause said sheep to be quarantined, at some place not more than two miles from the state line where said sheep entered the State of Idaho, for a period of not more than ninety days, and if deemed necessary by him, said inspector shall cause said sheep to be dipped at least twice, at the option of said deputy inspector, before they are released from such quarantine.

Any person, persons, company, corporation or association, or his or their agent, or employee, who shall ship by railroad into this state from any other state, any sheep, shall, before such sheep are unloaded at any point or place within this state, notify personally the deputy inspector of the district within which it is intended to unload such sheep, and thereupon said deputy inspector shall forthwith proceed

to inspect, quarantine and dip said sheep as in this section heretofore provided.

1901, 6th Ses. p. 147, Sec. 16.

Penalty for violation of this section:
Penal Code, Sec. 5068.

Bringing diseased sheep into the state: Penal Code, Sec. 5069.

INTERSTATE COMMERCE: The provisions of this section allowing those driving or herding sheep from another state into the state of Idaho to enter the state, before they are subjected to the police regulations of the state, were enacted to obviate the objections to the acts of 1895 and 1897, respecting the bringing of sheep into this state from another state. In construing those acts, the supreme court of the state of Idaho, in *State v. Duckworth*, 51 Pac. 456, says: "Section 14 of an act of the Legislature concerning the appointment of a sheep inspector, etc. (see Session Laws, 1895, p. 125), and sections 4 and 6 of an act amendatory thereof (see Session Laws, 1897, p. 115) declaring it to be unlawful to bring sheep into this state, with-

out first having them dipped, as provided in said acts, place an unnecessary burden and restriction upon interstate commerce, and are repugnant to the commerce clause of the federal constitution. Said sections also discriminate to such an extent against persons who may desire to bring sheep into the state, and those who have sheep in the state, as to be clearly repugnant to the provisions of section 2, Article IV, of the federal constitution." In the same case, the court further says: "The non-exercise by Congress of its power to regulate commerce among the states is equivalent to a declaration by that body that such commerce shall be free from any restrictions." This subject is further commented upon in *State v. Rasmussen* (Idaho), 59 Pac. 933; see decision of U. S. supreme court in *State v. Rasmussen*, affirming judgment of state court, 21 Sup. Ct. Rep. 594.

Section 705. Duty of Deputy When Sheep Cross State Line: It shall be the duty of the deputy sheep inspector, upon receipt of such notice of sheep having crossed the state line in his district, at once to inspect the same, as provided in the preceding section, and said sheep must remain within two miles of said state line until so inspected.

1901, 6th Ses. p. 149, first part of Sec. 17.

Penalty for violation of this section:
Penal Code, Sec. 5068.

Section 706. Deputy to Seize and Sell Sheep for Fine: When sheep are brought into this state, in violation of section 704, it shall be the duty of the deputy sheep inspector of the district or county wherein said sheep may be, immediately to seize the same and hold them, and file a complaint in a court of competent jurisdiction, charging the owner or person in charge of said sheep with a violation hereof, and, upon the conviction of the defendant in said action, the said deputy shall (unless all fines, costs, and charges be immediately paid) sell, in the same manner as sales of personal property on execution out of the district court, so many of said sheep as may be necessary to pay the costs and charges of making such sale, including the compensation due him, together with the fine imposed in such action. And a certified copy of the judgment in such action shall be his sufficient warrant for doing the same.

1901, 6th Ses. p. 149, last part of Sec. 17.

Section 707. Traveling Permit, Rights and Liabilities: Any person, persons, company, or corporation or association within the state, desiring to move his or their sheep which are not sound or are infected by scab or other infectious or contagious disease, shall first obtain from the deputy sheep inspector a traveling

permit. Such permit shall only be granted for the purpose of moving said sheep to the nearest suitable point where there are available dipping works or where they can be constructed, at which place said sheep shall be dipped.

Such sheep shall travel to said point over a route designated by the deputy sheep inspector.

The person or persons moving said sheep shall first notify all parties herding sheep along or over said route that the infected sheep have to travel, of the time they will pass over said route.

And any person, persons, company, corporation or association injured or damaged by reason of the moving of said sheep shall be entitled to recover from the person, persons, company, corporation or association moving the same, in a civil action, the amount of damage direct and consequential. *Provided, however,* No party shall be entitled to recover damages who shall voluntarily herd or cause to be herded any sheep on quarantined ground. Said sheep so voluntarily herded shall be considered as scabby without inspection and shall be treated as provided in section 698.

1901, 6th Ses. p. 150, portion of Sec. 19.

Penalty of deputy for granting permit without examination: Penal Code, Sec. 5071.

Penalty for violating this section: Penal Code, Sec. 5070.

Section 708. Who are Deemed Owners of Sheep:

In any action or proceeding, civil or criminal, arising under this chapter, any and all persons having any interest in sheep or controlling the same, and concerning which said action or proceeding is had, shall be deemed the owner of said sheep, and shall be liable jointly and severally for such violation.

1901, 6th Ses. p. 151, first part of Sec. 23, criminal portion, Sec. 5074.

Section 709. Deputy to Keep Record of Brands.

Annual Report: It shall be the duty of each deputy sheep inspector to keep a book in which he shall record as complete a description as practicable of the marks and brands with which each person in his county or district marks or brands his sheep, and the owners of sheep shall report in writing to such deputy sheep inspector their marks and brands for the purpose of aiding such deputy sheep inspector to make up and keep such records; said deputy sheep inspectors are also required to keep a book, in which they shall record the names of all persons prosecuted for violations of the provisions of this sub-division, together with a description of the particular offense charged against him or them, the name of the court in which the prosecution was had, and the result of such prosecution, giving the amount of fines where fines are imposed.

And on the first day of January of each year, each deputy sheep inspector, appointed under the provisions of this sub-division, shall make a report to the state sheep inspector; at the end of each inspection period shall state the condition in his county or district and the number of cases of scale, which report shall contain a true and correct copy of his record as contained in the books required by him to be kept under the provisions of this sub-division, which report

shall be placed in file in the office of the state sheep inspector. Said deputy inspector shall also keep a record showing the names of the owners or controllers of and the number and brand of all sheep inspected and quarantined by him under the provisions of section 704, together with the cause of quarantine, when the same shall have been imposed, and the length of time such quarantine was continued.

1901, 6th Ses. p. 152, Sec. 24.

Section 710. Deputy Has Power to Arrest: All deputy sheep inspectors are hereby given the power, and it is made their duty, to arrest and bring before a justice of the peace, or other court having jurisdiction of the same, all persons found violating any of the provisions of this sub-division, where a complaint shall be filed by such deputy sheep inspector, either upon his own knowledge or upon information of such violation; whereupon a hearing shall be had as in other like criminal cases; and such deputy sheep inspectors are hereby vested with the same authority to arrest and to require aid, in the execution of their said office as sheriffs and their deputies of the several counties of the state: *Provided*, That the provisions of this sub-division requiring the deputy sheep inspectors to prosecute for a violation of the provisions hereof, shall not be construed so as to prevent such prosecution from being commenced and prosecuted by other persons as criminal actions are commenced and prosecuted in other cases. The deputy inspectors, as full compensation for their services in prosecutions under this chapter shall be allowed five (\$5) dollars per day, and same shall be assessed as costs in the case against the defendant.

1901, 6th Ses. p. 153, Sec. 27.

Criminal statutes relating to sheep:
Penal Code, Secs. 5063 to 5078.

Section 711. Proclamation Prohibiting Importation from Infected Districts: Whenever the governor of the State of Idaho has reasons to believe that scab or any other infectious disease of sheep has become epidemic in certain localities in any other state or territory, or that conditions exist that render sheep likely to convey disease, he must thereupon by proclamation, designate such localities and prohibit the importation from them of any sheep into the state, except under such restrictions as, after consultation with the state sheep inspector, he may deem proper.

Any person or corporation who, after publication of such proclamation, receives in charge any such sheep from any of the prohibited districts and transports, conveys or drives the same to and within the limits of any of the counties of this state, is liable for all damages that may be sustained by any person by reason of the importation or transportation of such prohibited sheep.

1901, 6th Ses. p. 25, Sec. 1.

Penalty for violating this section:
Penal Code, Sec. 5063.

Section 712. Prohibited Sheep to be Driven Back Across State Line, Fine and Costs: Whenever the proclamation of the governor, issued as hereinbefore provided, shall prohibit the driving or importation of sheep into this state from another state or territory, or sub-divisions thereof, it shall be the duty of the state sheep inspector, or any of his deputies to drive or transport

said sheep so coming into this state in violation of said proclamation back across the state line from which they came, using all necessary force in so doing: *Provided*, That the state sheep inspector or his deputies may employ such assistance as may be necessary for the enforcement of the provisions of this section and the costs of such deportation shall be a lien upon said sheep: *Provided*, That if the fine and costs provided in this and the preceding section shall not be immediately paid, the deputy sheep inspector shall retain a sufficient number of said sheep to pay such fine and costs, which sheep shall be sold to pay the same, by the deputy sheep inspector, in the same manner as provided by law for the sale of personal property to satisfy a judgment, and for such services the deputy sheep inspector shall receive and retain such fees as is allowed sheriffs for like services to be taxed as costs.

1901, 6th Ses. p. 25, Sec. 2.

Section 713. Notice to Deputy Inspector After Quarantine: Upon issuing such proclamation, the owners or persons in charge of any sheep being shipped into Idaho, against which quarantine has been declared, must forthwith notify the deputy inspector of the county into which such sheep first come, of such arrival, and such owner or persons in charge must not allow any sheep so quarantined to pass over or upon any public highway, or upon the ranges occupied by other sheep, or within five miles of any corral in which sheep are usually corralled until such sheep have first been inspected, and any person failing to comply with the provisions of this section is liable for all damages sustained by any person by reason of the failure to comply with the provisions of this section.

1899, 5th Ses. p. 452, Sec. 2.

Penalty for violating this section:
Penal Code, Sec. 5065.

VALIDITY OF ACT: An act of the Idaho legislature establishing quarantine against diseased sheep, etc., passed on March 13, 1899, is not in contravention of section 8, Article I, nor section 2, Article IV, of the constitution of the United States.—*State v. Rasmussen* (Idaho), 59 Pac. 933. Rev. St. of the U. S., Sec. 5258, authorizing every railroad company in the United States "to carry upon and over its roads, boats, bridges and ferries, all passengers * * freight and property on their way from any state to another state," does not authorize such companies to carry from one state to

another, in violation of the state laws, cattle which are known to be in a condition to communicate disease to other cattle.—*Missouri K. & T. Ry. Co. v. Haber*, 18 Sup. Ct. Rep. 488.

QUARANTINE: It is not essential to the enforcement of a quarantine that the fact of the existence of the disease in the subject of the quarantine should be primarily established.—*State v. Rasmussen* (Idaho), 59 Pac. 933, 21 Sup. Ct. Rep. 594.

DAMAGES: One who drives diseased animals across a quarantine line into a protected area is liable in damages, though he did not know his animals were diseased.—*Croff v. Cresse* (Okl.), 54 Pac. 558.

DOGS AND OTHER ANIMALS WORRYING SHEEP.

Section 714. Liability of Owner: The owner, possessor, or harbinger of any dog or other animal that kills, worries, or wounds any sheep, Angora or Cashmere goats, is liable to the owner of the same for the damages and costs of suit, to be recovered before any court of competent jurisdiction:

1. In prosecutions of actions under the provisions of this section it is not necessary for the plaintiff to show that the owner, possessor, or harbinger of such dog or other animal had knowledge of the fact

that such dog or other animal would kill or wound sheep or goats.

2. Any person, on finding any dog, not on the premises of its owner or possessor, worrying, wounding, or killing any sheep, Angora or Cashmere goats, may at the time of so finding such dog kill the same, and the owner thereof can sustain no action for damages against any person so killing such dog.

1887 R. S. Sec. 1205.

LIABILITY OF STOCK RANCHERS.

Section 715. Stock Rancher Defined: Every person who, for a consideration, takes horses or other stock to keep and take care of by the day, week, month or year, is deemed a stock rancher.

1887 R. S. Sec. 1230; Compiled Laws of 1875, p. 744.

Section 716. Duty of Stock Rancher. Liable for Loss, When: It is the duty of every stock rancher to use due diligence to prevent the death or loss of, or injury to, any animal in his charge as such rancher; and in case of death, loss or injury to such animal while in possession of a stock rancher, the owner thereof may recover before any court of competent jurisdiction, the full amount of damages sustained, if it appears that such loss, death or injury was in consequence of the failure of the stock rancher to use due and reasonable diligence.

1887 R. S. Sec. 1231; Compiled Laws of 1875, p. 744.

Section 717. Stock Rancher Using Animal Forfeits Ranch Fees: Any stock rancher using any animal placed in his charge, by riding or working the same in any manner whatever, unless there is an express contract between himself and the owner thereof allowing such animal to be used, forfeits all claims or demands for ranch fees on such animal and he is liable for any damages or injury to such animal by reason of such use.

1887 R. S. Sec. 1232; Compiled Laws of 1875, p. 744.

QUARTZ MILL OWNER'S DUTY TOWARD STOCK.

Section 718. Must Build Enclosures: The owner or operator of any quartz mill must enclose with a good and substantial fence, sufficient to turn stock, all reservoirs and dumps or other material, known to contain that which is injurious to the health of stock.

1887 R. S. Sec. 1335; Compiled Laws of 1875, p. 741.

Section 719. Liability for Failure to Enclose: Every person who fails to comply with the provisions of the last section is liable to the owner of any stock injured by drinking the water or acids that flow from such mill, in twice the damage sustained.

1887 R. S. Sec. 1336; Compiled Laws of 1875, p. 741.

TRESSPASSING OF ANIMALS.

Section 720. Land Owner Not to Fence Against Hogs: The owner or occupant of premises is not required to fence against hogs.

1887 R. S. Sec. 1340.

Section 721. Trespassing Hogs May be Taken Up:

If any hog is found trespassing, the occupant or proprietor of the premises may take up and safely keep at the expense of the owner thereof, such hog and hold the same until the payment of the expense and damages by the owner, and shall be allowed fifty cents per head additional for each animal so taken up.

1887 R. S. Sec. 1341; amended by laws of 1889, 15th Ses. p. 38.

Section 722. Taker-Up Must Make and Post Notices:

Any person taking up a hog under this chapter, must immediately thereafter write out three notices in a plain, legible hand, giving a correct description thereof with the marks and brands, if any, on said hog, and the time and place of taking up, and at once post up said notices in a good and substantial manner in three conspicuous places in the precinct in which said hog was taken up.

1887 R. S. Sec. 1342.

Section 723. Proceedings to Ascertain and Recover Damages:

If the owner and taker-up of such hog can not agree as to the amount of damage, they must each select a disinterested person, residing in the precinct where such trespass has been committed, who must, after first hearing all the facts in the case from both parties interested, fix the amount of damages, if any to be paid, and the same are a lien upon said hog and other personal property of the owner, not exempt by law, and if said amount is not paid within five days together with costs of keeping said hog, the taker-up must notify the constable of the precinct, whose duty it is to levy upon the hog and a sufficient amount of other personal property of the owner not exempt by law as shall pay all damages and costs, and shall sell at public auction on the premises where the said hog was taken up, after first giving five days notice of such sale, in the manner prescribed in the last section, and the proceeds must be applied, first, to the payment of the constable's fees, which are the same as on execution; second, the payment of the award, and subsequent charges for keeping to the taker-up of such hog, and the remainder, if any, must be paid to the owner of such hog: *Provided*, That either party feeling aggrieved by the award may appeal to any justice's or probate court within the county, within five days after said award and the party so appealing must file a good and sufficient bond for the payment of all costs and expense arising from said appeal.

1887 R. S. Sec. 1343; amended by laws of 1889, 15th Ses. p. 38.

Section 724. Ownership Vests in Taker-Up After Thirty Days:

If the owner or person entitled to the possession of such hog does not appear and substantiate his title thereto, and pay the charges thereon within thirty days after the notice has been given, as above provided, the absolute ownership of such hog shall be vested in the person taking up such hog: *Provided*, he shall keep a copy of the notices posted, as prescribed by this chapter, which shall have endorsed thereon the date and manner of posting and the

places where posted, which shall have the same force and effect as a bill of sale of such hog.

1887 R. S. Sec. 1344; amended by laws of 1889, 15th Ses. p. 39.

Section 725. Impounding Hogs: It shall be the duty of any constable or peace officer in any platted and recorded town, upon the complaint of any citizen thereof, to take up and impound all hogs found running at large within the limits of said town. He shall keep and dispose of all hogs so taken up in the manner prescribed by this sub-division.

1889, 15th Ses. p. 39.

Section 726. Lien for Trespass of Animals Through Lawful Inclosure: Any person having any inclosure in conformity with the provisions of sections 674 and 675 of this chapter is deemed to possess a lawful inclosure, and if any horses, mules, jacks, jennies, cattle, hogs or sheep break into such inclosure, the party injured has a lien upon such animals until he is recompensed for all damages committed by said animals; *Provided*, That persons owning or occupying any lands which are inclosed by any water course or natural embankment, or hill, or any cliff or rocks, may have the same examined by viewers as is provided in this chapter, and if such appraisers report the same a sufficient inclosure it must be deemed a lawful inclosure.

1887 R. S. Sec. 1320; Compiled Laws of 1875, p. 832, Sec. 9; 1867, 4th Ses. p. 81, Sec. 9.

POLICE POWER: The legislature has authority under the police power of the state to require every man to inclose his land by a fence built in a prescribed manner; and it may refuse him a remedy for a trespass by cattle entering upon it in consequence of his neglect to comply with such requirements; but it cannot authorize one man to pasture his stock on the land of another, whether fenced or not. It may withhold the remedy, but it cannot grant the right.—*Bileu v. Paisley*, 18 Or. 47, 4 L. R. A. 840, 21 Pac. 934.

RECOVERY OF DAMAGES: There must be a substantial compliance with the statute and a lawful fence, or an obstruction of the same character, must surround entirely the ground or premises, as a condition precedent to the right to bring an action for damages.—*Smith v. Williams*, 2 Mont. 195.

There can be no recovery for damages sustained to the owner of uninclosed lands by reason of sheep straying or being driven thereupon and destroying the grass or verdure, unless it appears they were maliciously driven upon such lands for the purpose of causing injury.—*Fant v. Lyman*, 9 Mont. 61, 22 Pac. 120.

Section 727. Liability of Owner of Trespassing Animal: If any animal before mentioned breaks into any inclosure or through any fence conforming to the requirements of sections 674 and 675, the owner of such animal must for such trespass pay to the party injured the full amount of damage he has sustained by reason of such trespass, to be recovered with costs in any court having jurisdiction.

1887 R. S. Sec. 1321; Compiled Laws of 1875, p. 832, Sec. 10; 1867, 4th Ses. p. 81, Sec. 10.

Section 728. Taker-Up Holds at Expense of Owner: The party injured may take up any animal breaking into such inclosure and keep the same at the expense of the owner, and the said taker-up has a lien upon such animal for damages, costs and expenses; but the owner may at any time pay charges, costs and expenses and take such animal.

1887 R. S. Sec. 1322; Compiled Laws of 1875, p. 833, Sec. 11; 1867, 4th Ses. p. 81, Sec. 11.

Section 729. Proceedings on Complaint Before Justice of the Peace: Upon complaint of the party injured, to any justice of the peace in the county in which such trespass is alleged to have been committed, said justice must issue a summons, as in civil actions against the owner of said property as defendant; if not known he may be designated in said summons by a fictitious name; upon the return of said summons, if personally served, proceedings must be had as in civil actions; if the summons be not personally served in consequence of such defendant not being found in the county, then the said justice must forthwith issue an order requiring three disinterested freeholders of the precinct named therein, not related to the parties, to forthwith view the fence where the trespass is alleged to have been committed, and to appear at the time mentioned in said order, before said justice and give evidence thereof; and upon such hearing, if said justice finds that said fence was lawful and sufficient, he must proceed to assess the damages accruing in consequence of said trespass, and render judgment therefor, together with costs, as in other actions; such judgment only binds said property.

1887 R. S. Sec. 1323; Compiled Laws of 1875, p. 833, Sec. 12; 1867, 4th Ses. p. 81, Sec. 12.

Section 730. Fees of Viewers: The viewers appointed are entitled each to the sum of three dollars for their services, and fifty cents each for every mile necessarily traveled by them, which must be taxed as costs in said proceedings.

1887 R. S. Sec. 1324; Compiled Laws of 1875, p. 833, Sec. 13; 1867, 4th Ses. p. 82, Sec. 14.

Section 731. Execution: Redemption Fees: Upon the judgment, the justice must issue execution, particularly describing said property, and directing a sale thereof for the satisfaction of said judgment and costs; and the officer to whom the same is delivered for service, must thereupon post notices in three conspicuous and public places in said precinct, which notice must contain a particular description of said property, and specify a time and place of sale thereof, as in notice of sale on execution. At any time before said sale the owner may redeem said property from said lien, upon paying the costs and judgment, when rendered, or amount of said claim and costs. The justice, constable or sheriff may receive the same fees as for like services in civil actions.

1887 R. S. Sec. 1325; Compiled Laws of 1875, p. 833, Sec. 14; 1867, 4th Ses. p. 82, Sec. 14.

Section 732. Disposition of Surplus Proceeds of Sale: Upon the sale of any property as provided herein, and after the payment of all damages, expenses and costs, the overplus, if any there be, must be paid over to the justice, and if not demanded by the owner of said property within ninety days from the date of said sale, seventy-five per cent. thereof must be paid by said justice into the county treasury for the benefit of the common school fund,

and twenty-five per cent., the balance thereof, to the person taking and impounding said animal as compensation for his services.

1887 R. S. Sec. 1326; Compiled Laws of 1875, p. 834, Sec. 16; 1867, 4th Ses. p. 82, Sec. 16.

Section 733. Appeals. Jurisdiction of District Court: Nothing in this sub-division contained prevents appeals as in civil cases. If in any case the amount of such damages equals or exceeds three hundred dollars, proceedings to sell said property may be had in the district court.

1887 R. S. Sec. 1327; Compiled Laws of 1875, p. 834, Sec. 17; 1867, 4th Ses. p. 82, Sec. 17.

STALLIONS RUNNING AT LARGE.

Section 734. What Stallions May not Run at Large: The owner of any stallion over the age of eighteen months must not allow the same to run at large, unless it is of the market cash value of two hundred and fifty dollars, or more, and is at such value assessed.

1887 R. S. Sec. 1240; amended by laws of 1899, 5th Ses. p. 26; 1891, 1st Ses. p. 48.

Under the provisions of section 1240, Rev. St., and the act amendatory thereof (Ses. Laws 1891, p. 48) where a stallion that escaped from its owner

without his fault, and is killed by a railroad at a point where the company is required by law to fence its track, and has not done so, it is liable to the owner for the value of the stallion.—*Patrie v. Oregon Short Line R. Co.* (Idaho), 56 Pac. 82.

Section 735. Liability for Allowing Stallion to Run at Large: If any stallion of less than two hundred and fifty dollars market cash and assessed value, ridgling, or any unaltered male mule or jackass over the age of eighteen months be found running at large, the owner must be fined for the first offense twenty dollars, and for each subsequent offense not more than one hundred dollars nor less than forty dollars, to be recovered before a justice of the peace in the name of any person who will prosecute for the same, one-half to his own use and the other half to the use of the county school fund.

1887 R. S. Sec. 1241; amended by laws of 1899, 5th Ses. p. 26; 1891, 1st Ses. p. 49; original act, 1885, 13th Ses. p. 43.

LIABILITY FOR DAMAGES: If an animal of the enumerated class escapes from the place where it is con-

finied without the fault of its owner, he is not liable for the damages done by it while running at large.—*Briscoe v. Alfrey* (Ark), 32 S. W. Rep. 505; *Montgomery v. Breed*, 34 Wis. 649.

Section 736. Stallion May be Taken Up; Proceedings Thereon: Any person may take up and safely keep any such stallion, mule, ridgling or jackass found running at large or in his enclosures; and, when so found, must give the owner thereof five days notice that such animal is in his possession; and if, at the expiration of the aforesaid time, the owner neglects to remove such animal and pay all reasonable charges for keeping the same, then the taker-up must notify the sheriff or any constable, whose duty it is to sell such animal at public auction, on the premises where taken up, after first giving five days notice of such sale; and the proceeds of such sale must be applied, first, to the officer making such sale, which are the

same as on execution; second, to the payment of the charges of the taker-up of such animal; and the remainder, if there be any, must be paid to the owner of such animal.

1887 R. S. Sec. 1242; amended by laws 49; original act, 1885, 13th Ses. p. 43. of 1899, 5th Ses. p. 27; 1891, 1st Ses. p.

Section 737. Proceedings Where Owner is Unknown:

If the owner or claimant of any stallion, ridgling, unaltered male mule or jackass be unknown, the taker-up must give ten days notice, with the description of the animal or animals, its marks or brands, by posting up at least three written or printed notices in at least three conspicuous places in the county, calling upon the owner to claim the property; and if, at the expiration of the ten days, the owner neglects to remove such animal or animals and pay all costs, then the taker-up shall call on the sheriff or any constable of the county to sell such animal or animals; and after deducting the fees of the officer making such sale and the reasonable charges of the taker-up, the balance if any there be, shall be paid into the county treasury, to be applied to the county school fund.

1887 R. S. Sec. 1243; amended by Ses. p. 49; original act, 1885, 13th Ses. laws of 1899, 5th Ses. p. 27; 1891, 1st p. 43.

ESTRAYS.

Section 738. Duty of Taker-Up of Estray: Every person taking up any stray animal, must within five days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges and take such stray away.

1887 R. S. Sec. 1360; Compiled Laws Penal statutes relating to estrays: of 1875, p. 746, Sec. 1; 1864, 2d Ses. p. Penal Code, Secs. 5060, 5061. 409.

Section 739. When Estrays May be Taken Up: Any person finding an animal known to be an estray upon land enclosed and in the possession of such person, at any time between the first day of November and the first day of April, may immediately take up such animal as an estray; or if, during such time, an animal be found upon premises occupied by another, in a condition to require food to preserve its life, it may be taken up and published as an estray in accordance with the provisions of this chapter.

1887 R. S. Sec. 1361; Compiled Laws of 1875, p. 746, Sec. 2; 1864, 2d Ses. p. 409.

Section 740. Duty of Taker-Up and Auditor Where Owner Unknown: If the owner or claimant of any estray animal be unknown, the taker-up must, within ten days after taking up such animal, file with the county auditor a notice giving a description of such animal, the marks, brands, natural or artificial, as near as practicable, the name and residence of the taker-up, and the time at which the same was taken up. Said auditor must immediately cause such notice to be published in a paper published nearest where said animal is taken up for four consecutive weeks. If no newspaper be published in any county of the State of Idaho, such

notice must be published in some newspaper in an adjoining county for four consecutive weeks. Said taker-up must deposit with the county auditor the sum of fifty cents for filing and one dollar for publishing said notice.

1887 R. S. Sec. 1362; amended by 1877, 9th Ses. p. 41.
 laws of 1899, 5th Ses. p. 397; original Penalty for violating section: Penal
 act approved Dec. 22, 1864; amended Code, Sec. 5061.

Section 741. Owner May Redeem Within Forty Days: If the owner, or any person entitled to the possession of any estray, appears at any time within forty days after said notice is filed with the auditor, as aforesaid, and make out his right thereto, he is entitled to the possession of such estray upon payment of all lawful charges which have been incurred in relation to the same; *Provided*, That he need not pay for the keeping of said estray more than five days prior to the filing of the notice with the auditor by the taker-up.

1887 R. S. Sec. 1363; amended by im- amended 1866, 3d Ses. p. 160; 1883, 12th
 plication by laws of 1899, 5th Ses. p. Ses. p. 61.
 398; original act, 1864, 2d Ses. p. 410,

Section 742. Proceedings on Disagreement as to Charges: If the owner and taker-up of any estray cannot agree upon the amount of such charges, or for the use of any such stray, either party may make application to any justice of the peace of the county where such estray was taken up to settle the same, and the party making such application must give notice thereof to the other party, and if any amount be found due to the taker-up by said justice, over the value of the use of such estray, the same is a lien on said estray until paid by the owner, together with the cost of such adjudication, and if not paid, said justice may enter up judgment and issue execution, commanding the sale of such estray to pay such debt and cost, but only such estray can be made liable for debt and cost, and either party has the right to appeal to the district court as in other cases.

1887 R. S. Sec. 1364; Compiled Laws of 1875, p. 747, Sec. 6; 1864, 2d Ses. p. 410, Sec. 6.

Section 743. Sale of Estrays. Sheriff to Brand: If any person entitled to the possession of any estray, does not appear and substantiate his title thereto, and pay the charges thereon, within forty days from the time when such notice is filed with the county auditor, such estray must be sold at the request of the taker-up by the sheriff or any constable of the county living nearest the place of sale, at public auction, upon first giving public notice thereof, in writing, by posting up the same in three of the most public places in the precinct where such estray was taken up, at least ten days before such sale, and the taker-up may bid thereon at such sale; and after deducting all the lawful charges of the taker-up, as aforesaid, not to exceed ten cents per day for feeding each estray, and the fees of the sheriff or constable, which are the same as on an execution; the sheriff or constable making such sale must, within five days after the sale, de-

posit the remaining proceeds of such sale in the county treasury, and furnish the county treasurer with an itemized statement showing the entire costs the amount for which each estray was sold, and the amount deposited in the county treasury. Any estray sold as herein provided shall be branded by the sheriff or constable making such sale, with an estray brand, as follows: A circle with an initial E in the center



the same to be placed on the left side, or ribs of all horned

stock, and on the shoulder of all other stock. The branding irons for such purpose shall be furnished by each respective county in the State of Idaho; and the sheriff or constable, making such sale shall receive for his services the sum of fifty cents per head, for each animal so branded.

1901, 6th Ses. p. 88.

Penalty for violating section: Penal Code, Sec. 5061.

Section 744. Penalty for Taking Away an Estray:

If any person, without the consent of the taker-up, takes away any estray taken up pursuant to the provisions of this sub-division without first paying all the lawful charges incurred in relation to the same, he is liable to the taker-up for the full value of such estray, and may be proceeded against before any court having competent jurisdiction.

1887 R. S. Sec. 1366; Compiled Laws of 1875, p. 748, Sec. 8; 1864, 2d Ses. p. 411, Sec. 8.

Section 745. Penalty for Neglect to Advertise: If the taker-up of an estray neglects to cause the same to be advertised, or notice thereof to be posted, or if he moves or causes the same to be moved beyond the bounds of the county where taken up, or if he neglects to perform any of the duties required of him by this sub-division, he is precluded from acquiring any right of property in such estray, and from receiving any damages or charges for keeping the same, and he forfeits and must pay into the county treasury, a sum equal to the value of such estray, to be sued for and recovered by the county treasurer, in the name of the county, and the amount so recovered must be applied to the common school fund of the county.

1887 R. S. Sec. 1367; Compiled Laws of 1875, p. 748, Sec. 9; 1864, 2d Ses. p. 411, Sec. 9, amended, 1877, 9th Ses. p. 42.

Section 746. Owner May Claim Proceeds Within Six Months: If the owner or claimant of any estray sold under the provisions of this chapter within the period of six months after such sale, make satisfactory proof of ownership to the county commissioners of said county in which said estray was sold, the said commissioners must thereupon order a warrant to be drawn upon the treasurer for the amount paid to him upon the sale of such estray. In case such proof is not made within the said six months the money must be applied to the county school fund of the county.

1887 R. S. Sec. 1368; 1877, 9th Ses. p. 42.

Section 747. When Estray May not be Taken Up:

Nothing in this sub-division must be so construed as to permit any person or persons to take up or treat any animal as an estray between the first day of April and the first day of November.

1887 R. S. Sec. 1369; 1877, 9th Ses p. 42.

Section 748. Taker-Up May Use Work Animals: In case estrays are work animals, they may be used by the taker-up in the same manner as though he were the owner thereof, and the value of such estray must be deducted from the charges attaching to such estray.

1887 R. S. last part of Sec. 1370; of Sec. 10.
Compiled Laws of 1875, p. 748, portion Penalty for converting estrays: Penal
of Sec. 10; 1864, 2d Ses. p. 411. portion Code, Sec. 5060.

Section 749. Illegible Brands: When the taker-up of an estray finds marks or brands on such animal that are illegible, he must call a competent witness to establish said fact, whose name and address must be published in the estray notice filed with the county auditor.

1899, 5th Ses. p. 398, Sec. 3.

Penalty for violation of section:
Penal Code, Sec. 5061.

AUCTIONEERS OF LIVE STOCK.

Section 750. Auctioneer Must Register Stock Sold:

Every person who is licensed, under the laws of this state, to sell live stock or other goods and wares, must keep in his office a book for the purpose of registering a description of each animal that he may sell; to be called the auctioneer's register book of stock sold.

1887 R. S. Sec. 1275; 1885, 13th Ses. p. 32. Penalty for violating these provisions: Penal Code, Sec. 5059.

Section 751. Register Must Contain Description of Animal: Every auctioneer before selling any animal, must take down in ink on the register book, provided for in the preceding section, a correct description of each animal he is about to sell, the color, age, mark and brand as near as practicable also the date and name of, and residence of the owner of said animal, and, when sold, add to said description the name and residence of the purchaser.

1887 R. S. Sec. 1276; 1885, 13th Ses. p. 33.

Section 752. Register Open to Inspection: Every auctioneer's register book of stock sales must, upon application by any county or state officer, or any stock grower of the county, be open for his inspection.

1887 R. S. Sec. 1277; 1885, 13th Ses. p. 33.

Section 753. Register Deposited with Recorder, When: Any auctioneer who discontinues the business of selling live stock or removes from the county, must deliver to the recorder of said county, all of his register books of live stock sold. The recorder must keep said register in his office for the inspection of any citizen of the county or state.

1887 R. S. Sec. 1278; 1885, 13th Ses. p. 33.

STALLIONS OFFERED FOR SERVICE.

Section 754. Stallion Must be Registered. Certificate: Every owner or agent who may have the custody or control of any stallion, who shall charge a fee for the service of such stallion, shall before advertising or offering such service to the public, for any fee, reward, or compensation, file with the recorder of the county in which such owner or owners or agent resides, or in which such stallion shall be kept for service, a written statement, giving the name, age, pedigree, if known, and if not, that the same is unknown, description, terms, and conditions upon which such stallion will serve. Upon filing such statement, the county recorder shall issue a certificate or license to the owner, or owners, or agent having the custody and control of such stallion, that such statement has been filed in his office. The owner, or owners, or his or their agent, of such stallion shall then post a written or printed notice, of a copy of the statement so filed with the county recorder, together with the certificate of the recorder, in a conspicuous place in each locality in which such stallion shall be kept for service.

1899, 15th Ses. p. 24, Sec. 1.

Section 755. Penalty for Failure to Comply with Preceding Section: Every owner or agent who shall proclaim or publish a false or fraudulent pedigree, or shall neglect or refuse to comply with the provisions of section 754, shall forfeit all fees for the services of such stallion, and the person or persons who may have been deceived or defrauded by such false or fraudulent pedigree, may sue and recover in any court having jurisdiction, such damages as may be shown to have been sustained by reason of such false representation and fraud.

1899, 15th Ses. p. 24, Sec. 2.

Section 756. Lien for Services: Whenever the owner, or his agent, of any stallion, shall have complied with the foregoing provisions, the services of such stallion shall become a lien on each mare served, together with the foal of such mare, from the time of such service, in an amount agreed upon between the parties at the time of service, or if no agreement was entered into, then in such amount as specified as service fee of stallion or stallions in the statement of the owner or agent filed with the county recorder: *Provided*, A notice of lien shall be filed within twelve months after such service, in the same manner and place as chattel mortgages are now required by law to be filed. The notice of lien so filed shall be in writing, specifying against whom the claim is, the amount of the same, together with a full description of the property upon which the lien is held. Such lien shall terminate at the end of one year from the date of filing notice thereof, unless, within that time, an action shall be commenced for the enforcement thereof, as provided for the enforcement of other liens.

1889, 15th Ses. p. 24, Sec. 3,

CHAPTER XVIII.

PROTECTION OF HORTICULTURE.

Section.

757. State board of horticultural inspection.

758. Official oath.

759. Officers of board, meetings.

760. Districts, general state inspector and district inspectors.

761. Compensation of district inspectors.

762. Duties of inspectors.

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764. Board may circulate printed bulletins.

765. Prohibition against peach products.

766. Prohibition against diseased trees, etc.

767. Shippers must mark packages.

768. Monthly report of inspectors; payment of bills.

769. Board shall serve without compensation.

Section 757. State Board of Horticultural Inspection: There is hereby created a state board of horticultural inspection, which board shall consist of five members as follows: The professors of botany and zoology of the University of Idaho shall be ex-officio members of said board and the other three members shall be appointed by the governor of the state, and shall hold their offices for the term of three years or until their successors are appointed and qualified and in making said appointments the governor shall consider the recommendations of the "State Horticultural Society" as the proper persons to be so appointed: *Provided*, That of the three members of said board first appointed, one shall hold his office for one year, one for two years and one for three years from the date of his appointment.

1899, 5th Ses. p. 122, Sec. 1; 1897, 4th Ses. p. 109.

Section 758. Official Oath: Before entering on the duties of his office, each member of said board shall take and subscribe the official oath prescribed for state officers, which oath shall be filed in the office of the secretary of state.

1899, 5th Ses. p. 122, Sec. 2; 1897, 4th Ses. p. 109.

Official oath: Sec. 279 et seq.

Section 759. Officers of Board. Meetings: Said board shall elect a president and a secretary from its number, who shall hold their offices during the pleasure of the board. The secretary shall perform such duties as may be prescribed by the board, and shall receive such compensation as the board may establish, not exceeding two hundred and fifty dollars per annum. Said board shall meet annually at such times and at such places as it shall determine.

1899, 5th Ses. p. 122, Sec. 3; 1897, 4th Ses. p. 110.

Section 760. Districts, General State Inspector and District Inspectors: Said board shall divide the state into not more than ten districts, and shall appoint a horticultural inspector for each district so established. The persons so appointed shall be specially qualified for their positions by reason of practical knowledge of horticulture and the pests incident thereto. Their jurisdiction shall be limited to their respective districts; *Provided*, That said

board shall have authority and power to appoint a general state inspector, who shall have jurisdiction throughout the entire state, and shall fix his duties and compensation; which compensation shall not exceed the sum of six dollars per day. Said inspectors shall hold their offices during the pleasure of the board, and shall be furnished with all necessary blanks by said board. Said board shall make an estimate of the amount of money available for each of said districts and for the state at large, and no inspector shall incur any expense of any kind in excess of said estimate furnished him by the said state board. The aggregate sum of all the estimates furnished to the various inspectors for any year must in no case exceed the appropriation available for such year.

1899, 5th Ses. p. 437; amending laws of 1897, 4th Ses. p. 110, Sec. 4.

Section 761. Compensation of District Inspectors:

Each inspector so appointed, except the general state inspector, shall receive as compensation for his services, as such inspector, the sum of not to exceed five dollars per day for each day actually and necessarily employed in the discharge of his duties. Such compensation shall be paid out of the general fund of the state, upon warrants drawn by the state auditor, only after the bills presented for such services shall have been audited and approved by the secretary and a majority of the members of said board and audited as other bills against the State of Idaho.

1899, 5th Ses. p. 437, amending laws Bills, how audited: Sec. 344 et seq.
of 1897, p. 110, Sec. 5.

Section 762. Duties of Inspectors: It shall be the duty of said inspectors, either upon their own motion, or upon the complaint of interested parties, to enter and make, or cause to be made, inspections of any field, rights of way of irrigation canals or railways, public highways, orchard nursery, fruit packing houses, storeroom, salesroom, depot, or other places where fruits are grown or stored, and of fruits, trees, plants, vines, or other horticultural material within the state, supposed to be, or liable to be, infested with fruit pests, or with their eggs, or larvae, or infested with contagious diseases injurious to fruits, plants, trees, or vines, as hereinafter provided. If upon inspection there be found any disease or pest, eggs or larvae of any pest, injurious to fruits, plants, trees, or vines, the inspector shall notify the owner or owners, or the person or persons in charge or in possession of said places, orchards, nurseries, trees, plants, fruits or horticultural material as aforesaid; and shall require such person or persons to eradicate said disease and destroy said injurious pests or other insects, or their eggs or larvae, within a reasonable time to be specified. Said notice shall be served in person or in writing on said person or persons, or either of them, owning or having in charge such infested place, orchard, nursery, trees, plants, vines, fruits, or horticultural articles, or it may be served in the same manner as the summons in a civil action. If the owner or owners, or the person or persons in charge or possession of any orchard or nursery, or trees or plants, or horticultural articles infested with insects, or their eggs or larvae, after having been notified as above to

destroy the same, shall fail, neglect, or refuse so to do, then any and all such orchards, nurseries, trees, plants, vines, fruit or articles thus infested are adjudged and declared to be a public nuisance and shall be proceeded against as such; and whenever any such nuisance shall exist at any place in the state or on the property of any non-resident, or on any highway as aforesaid, or on any property the owner or owners of which cannot be found within the state, or on any property where notice has been served as aforesaid, and where the owner or those in possession shall refuse or neglect to abate such nuisance within the time specified, it shall be the duty of the district inspector within the county wherein the nuisance is, or of the state inspector, or either, and he is hereby empowered to cause said nuisance to be abated at once by eradicating or destroying all said pests, or their eggs or larvae; or by disinfecting or destroying all fruit, vines, plants or other articles upon which any of said fungous diseases, pests, or their egg or larvae may be found. The expense of such proceedings shall be paid out of the general fund of the state in the same manner as inspectors are paid. All sums so paid shall be collected from the parties owning said real estate on which such nuisance was situated, by civil suit in the name of the board herein created, and it shall be the duty of the county attorney of the county in which such real estate is situated to bring said suit; and said sum when collected shall be paid into the state treasury.

1899, 5th Ses. p. 437, amending laws Proc. Sec. 3247.

of 1897, 4th Ses. p. 111, Sec. 6.

Summons, how served: Code Civil 2965. Public nuisances: Civil Code, Sec.

Section 763. Inspectors May Enforce Quarantine:

The inspectors are hereby vested with all necessary authority to enforce quarantine against any infested fields, lots, orchards, nurseries, trees, plants, shrubs, vines, buds or scions, fruits or any place or article within the state when the same may be liable to spread contagious diseases injurious to fruit or trees, or fruit crops of any kind, and to provide necessary rules and regulations to govern the same.

1899, 5th Ses. p. 123, Sec. 7; 1897, 4th Ses. p. 112.

Section 764. Board Shall Circulate Printed Bulletins:

For the purpose of disseminating knowledge concerning contagious diseases or injurious pests affecting trees, plants, vines or fruits, and the remedies, preventives, and disinfectants applicable thereto; the board shall from time to time, as it may deem necessary, have bulletins printed containing such information, remedies, preventive and disinfectants as it may approve, which bulletins shall be circulated among the fruit growers, fruit dealers, shippers, transportation companies of horticultural products and their agents within the state.

1899, 5th Ses. p. 124, Sec. 8; 1897, 4th Ses. p. 112.

Section 765. Prohibition Against Peach Products,

All peach, nectarine, apricot, plum, prune, almond or other trees, budded or grafted upon peach stocks or roots; all peach or other pits, cuttings, buds or scions, raised or grown in a district where "peach

“yellow” or “peach rosette” is known to exist are hereby prohibited from being offered for sale, gift, distribution, transportation or planting within the State of Idaho. Any person, persons, dealers, shippers, transportation companies or their agents, who shall be in possession of any such property for any purpose shall, when required by the inspector, burn the same without delay.

1899, 5th Ses. p. 124, Sec. 9; 1897, 4th Ses. p. 112.

Section 766. Prohibition Against Diseased Trees: Etc.: Fruit of any kind, trees, plants, cuttings, grafts, buds, seeds, scions, pits, or transportable material of any kind grown in any foreign country or in any of the United States or territories, infested by any insect or insects or their eggs or larvae, seeds of weeds, or by any fungus or other disease or its germs, known to be injurious to fruit, or fruit trees or to other trees, and liable to spread contagion, are hereby prohibited from being offered for sale, gift, distribution, transportation or planting in any county of this state, until the same shall have been examined by the state inspector for such county or district, and if found diseased or infested, shall have been thoroughly disinfected, as may be required by the inspector, the owner to pay the actual expense of such disinfection.

1899, 5th Ses. p. 124, Sec. 10; 1897, 4th Ses. p. 112.

Section 767. Shippers Must Mark Packages: Any person or persons shipping fruit, or fruit trees, scions, cuttings, or plants within the state shall affix to each package or parcel containing the same a distinct mark, stamp or label, showing the name of the produce and the shipper of the same and the locality where grown.

1899, 5th Ses. p. 124, Sec. 11; 1897, 4th Ses. p. 113.

Penalty for violating provisions of this chapter: Penal Code, Secs. 4765, 4766.

Section 768. Monthly Report of Inspectors. Payment of Bills: Each inspector shall make a detailed report of all his official acts to the secretary of said board on the first day of every month, which report shall be under oath and shall include a statement of the number of days actually and necessarily employed and miles traveled as such inspector during said month and a detailed statement of the amount due him or to other persons, for services or expenses. The secretary of said state board shall audit all such bills and shall submit them by mail to each member of said state board for approval and signature. If approved by a majority of said board, said bill shall be transmitted to the state auditor, and they shall be audited and paid as other claims against the state: *Provided*, Such bills shall not be so sent by mail to the members of the board during the month in which occurs the annual meeting of said board, but shall be submitted at such meeting.

1899, 5th Ses. p. 124, Sec. 13; 1897, 4th Ses. p. 113.

Section 769. Board Shall Serve Without Compensation: The members of the board shall serve without compen-

sation, but shall receive actual expenses incurred in attending the meetings of the board.

1899, 5th Ses. p. 125, Sec. 14; 1897, 4th Ses. p. 114.

TITLE IV.

ELECTIONS.

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Chap. XX. Qualifications of Electors.

Chap. XXI. Nominations of Officers.

Chap. XXII. Election Precincts and Precinct Booths.

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Chap. XXIV. Printing and Distribution of Ballots.

Chap. XXV. Election Officers and Conduct of Elections.

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Chap. XXVII. Presidential Electors.

Chap. XXVIII. Removal of County Seats and Alteration of County Lines.

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CHAPTER XIX.

THE TIME OF HOLDING GENERAL AND SPECIAL ELECTIONS. ELECTION PROCLAMATIONS.

Section.

GENERAL ELECTIONS.

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772. Time of electing state, legislative and congressional officers.

773. Time of electing supreme and district judges.

774. Time of electing electors of president.

775. Time of electing justices and constables.

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780. Notice of special election.

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782. When and by whom issued.

783. What proclamation must state.

784. Notice by clerk of board of county commissioners.

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GENERAL ELECTIONS.

Section 770. Date of Election: A general election shall be held in the several precincts in this state on the Tuesday succeeding the first Monday of November, A. D. 1902, and on the Tuesday succeeding the first Monday of November every alternate year thereafter.

1899, 5th Ses. p. 34, Sec. 6; 1891, 1st Ses. p. 59, date changed by Commission to conform to first election after adoption of Code.

Crimes against the elective franchise: Penal Code, Chap. CCX.

GENERAL ELECTION DEFINED: A general election is an election held to select an officer after the expiration of the full term of the former officer.-- Kenfield v. Irwin, 52 Cal. 164.

Section 771. Time of Electing County Officers: At the general election, A. D. 1902, and every fourth year thereafter, there shall be elected in every county in the state, a clerk of the district court, who is ex-officio auditor and recorder, and at the general election, A. D. 1902, and every alternate year thereafter, there shall be elected in every county, of the state, the following officers, to-wit: Three county commissioners, a sheriff, county treasurer, who is ex-officio public administrator; probate judge, county superintendent of public instruction, prosecuting attorney, and county assessor, who is ex-officio tax collector; one coroner and one surveyor.

1899, 5th Ses. p. 34, Sec. 7; 1891, 1st Ses. p. 59.

Section 772. Time of Electing State, Legislative and Congressional Officers: At the general election, A. D. 1902, and every alternate year thereafter, there shall be elected the following state officers, to-wit: One governor, one lieutenant-governor, one secretary of state, one state treasurer, one state auditor, one superintendent of public instruction, one attorney-general, and in each representative and senatorial district of the state such representatives and senators as they may be severally entitled to. Also on the first Tuesday succeeding the first Monday of November, A. D. 1902, and every alternate year thereafter, there shall be elected the number of representatives in congress to which the state may be entitled.

1899, 5th Ses. p. 34, Sec. 8; 1891, 1st Ses. p. 59.

Section 773. Time of Electing Supreme and District Judges: At the general election, A. D. 1902, and every alternate year thereafter, there shall be elected one judge of the supreme court, and at the general election, A. D. 1902, and every fourth year thereafter there shall be elected in each judicial district of the state, one district judge.

1899, 5th Ses. p. 34, Sec. 9; 1891, 1st Ses. p. 60.

Section 774. Time of Electing Electors of President: At the general election, A. D. 1904, and every fourth year thereafter, there shall be elected such a number of electors of president and vice-president of the United States as the state may be entitled to in the electoral college.

1899, 5th Ses. p. 34, Sec. 10; 1891, 1st Ses. p. 60.

Section 775. Time of Electing Justices and Constables: At the general election, A. D. 1902, and every alternate year thereafter, there shall be elected in each justice's precinct, except wards in incorporated cities, two justices of the peace and one constable, and all other officers, not herein specified, that now are, or hereafter may be created shall, unless otherwise provided, be elected on the day of the general election.

1899, 5th Ses. p. 34, Sec. 11; 1891, 1st Ses. p. 60.

SPECIAL ELECTIONS.

Section 776. How Conducted: Special elections shall be

conducted and the results thereof canvassed and certified in all respects, as near as practicable, in like manner as general elections, except as otherwise provided; but special elections shall not be held, unless when required by public good, and in no case within ninety days next preceding a general election.

1899, 5th Ses. p. 65, Sec. 157; 1891, 1st Ses. p. 61, Sec. 16.

SPECIAL ELECTION, WHAT IS: An election to fill a vacancy is a special election, and the governor's proclamation is essential to its validity.—*Westbrook v. Rosborough*, 14 Cal. 180; *McKune v. Weller*, 11 Cal. 49; *People v. Templeton*, 12 Cal. 394; *People v. Porter*, 6 Cal. 26; *Kenfield v. Irwin*, 52

Cal. 164. If the election proclamation informs the voters at a general election that a vacancy has occurred in an office, and if it notify them to meet in their respective districts on the day of the election for the purpose of electing an officer for the unexpired term, it will be sufficient, though it fail to designate the election as a special election.—*Tilson v. Ford*, 53 Cal. 701.

Section 777. Canvass and Return of Special Election: In all cases where special elections are to be held to fill vacancies in offices mentioned in chapter XXIX, the board of canvassers shall meet at twelve (o'clock) m. on the third day after such election, to canvass the votes cast at such election, and the county auditor, within four days after any special election for a member of the legislature, or representative in congress, shall transmit to the secretary of state an abstract of the votes cast at said election, if there be more than one county in the district.

1899, 5th Ses. p. 65, Sec. 158; 1891, 1st Ses. p. 107, Sec. 178.

Section 778. Canvass by State Board: Within ten days after said election in the case last mentioned, the board of state canvassers shall meet and canvass the votes cast to fill such vacancy, and if the returns have not been received from all the counties composing said district, they may adjourn to such day as they deem necessary, not exceeding five, for the purpose of receiving said returns.

1899, 5th Ses. p. 65, Sec. 159; 1891, 1st Ses. p. 107, Sec. 179.

Section 779. General Election Provisions Govern: The provisions relating to general elections shall govern special elections, except where otherwise provided for.

1899, 5th Ses. p. 66, Sec. 160; 1891, 1st Ses. p. 107, Sec. 177.

Section 780. Notice of Special Election: Whenever a special election is ordered by the board of commissioners, notice must be issued and posted in the same manner as for a general election.

1899, 5th Ses. p. 66, Sec. 161; 1891, 1st Ses. p. 62, Sec. 24.

Section 781. Special Elections for Presidential Electors: There shall be an election held in this state for the election of electors, at the times appointed by any law of the congress or the constitution of the United States for such election, and when such election shall be special, the same shall be called, held, and the votes polled, canvassed in all respects as at a general election, and by the duties of the electors so elected shall be the same as prescribed by law for electors elected at a general election.

1899, 5th Ses. p. 57, Sec. 102; 1891, 1st Ses. p. 92, last part of Sec. 115.

ELECTION PROCLAMATIONS.

Section 782. When and by Whom Issued: At least forty days before each general election, and whenever he orders a special election, the governor must issue an election proclamation under his hand and the great seal of the State of Idaho, and transmit copies thereof to the board of commissioners of the counties in which such elections are to be held.

1899, 5th Ses. p. 35, Sec. 12; 1891, 1st Ses. p. 61, Sec. 20.

Section 783. What Proclamation Must State: Such proclamation must contain a statement of the time of election and the offices to be filled.

1899, 5th Ses. p. 35, Sec. 13; 1891, 1st Ses. p. 61, Sec. 21.

Section 784. Notice by Clerk of Board of County Commissioners: The clerk of the several boards of county commissioners must at least twenty days before any general election, make out and transmit by registered mail to the registrar of each election precinct, three notices to be, as nearly as circumstances will admit, as follows: Notice is hereby given that on Tuesday following the first Monday of November next at the (here designate polling place) in the county of an election will be held for members of congress, state, county, district and precinct officers (naming the candidates and offices to be filled as the case may be) which election shall be open at eight o'clock in the morning and will continue until seven o'clock in the evening of the same day. Dated this day of A. D. 19..... (as the case may be).

Signed
Clerk of the board of county commissioners.

1899, 5th Ses. p. 35, Sec. 14; 1891, 1st of 4th Ses. p. 29.
Ses. p. 62, Sec. 22, amended by laws

Section 785. Duty of Registrar Regarding Notices: The registrar aforesaid, to whom such notices are transmitted as aforesaid, must cause to be posted up in three of the most public places of each election precinct at least fifteen days previous to the time of holding any general election, the notices referring to such election precinct; said notices shall be posted as follows: One at the house or place where the election is authorized to be held, and the others at two of the most public and suitable places in the precinct.

1899, 5th Ses. p. 35, Sec. 15; 1891, 1st 1897, 4th Ses. p. 29.
Ses. p. 62, Sec. 23, amended by laws of

CHAPTER XX.

QUALIFICATIONS OF ELECTORS.

Section.

786. Who are qualified to vote.

787. Who are prohibited from voting.

Section.

788. Who do not lose residence by absence.

789. Electors privileged from arrest.

Section 786. Who are Qualified to Vote: Every person over the age of twenty-one years, possessing the qualifications following, shall be entitled to vote at all elections. He shall be a citizen of the United States and shall have resided in this state six months, and in the county thirty days, immediately preceding the election at which he offers to vote: *Provided*, That no person shall be permitted to vote at any county seat election who has not resided in the county six months and in the precinct ninety days where he offers to vote; nor shall any person be permitted to vote at any election for the division of a county, or striking off from any county any part thereof, who has not the qualifications provided for in section 3, article XVIII, of the constitution.

1899, 5th Ses. p. 33, Sec. 2; 1891, 1st Ses. p. 58, Sec. 2.

Note.—The word “male” stricken out to conform to constitutional amendment giving right of suffrage to women.

RESIDENCE: It is not required that the elector should continuously remain at his residence, provided that he does not acquire a new residence, and his absence may be long or short, or for definite or indefinite periods, and he does not thereby lose his residence or right to vote.—*Moffat v. Hill*, 131 Ill. 239, 22 N. E. 821; *Carter v. Putnam*, 141 Ill. 133, 30 N. E. 681. The fact that one is a student in a university does not, of itself, entitle him to vote where the university is situated, nor does it prevent him from voting there. He resides where he has his established home, the place where he is habitually present, and to which, when he departs, he intends to return. The fact that he may at a future time intend to remove, will not necessarily defeat his residence before he actually does move. It is not necessary that he should have the intention of always remaining, but there must co-exist the fact and intention of making it his present abiding place, and there must be no intention of presently removing.—*Berry v. Wilcox* (Neb.), 62 N. W. Rep. 249. A voter need not have any particular spot which he calls

“home,” provided he makes his home, in the sense of having no other home, anywhere or in however many places, for the required time, within the limits of the state and the voting district.—*Langhammer v. Munter*, 80 Md. 518, 27 L. R. A. 330, 31 Atl. 300. A statute which requires a voter to reside in the state six months immediately preceding an election, to be entitled to vote, means an actual settlement within the state, adopted as a fixed habitation.—*Sharp v. McIntire*, 46 Pac. 115, 23 Colo. 99. The thirty days’ residence in a county, to entitle an elector to vote, must be ascertained by excluding the day of the election. When an elector moves his family to a county with the intention of residing there, that is the county where he should vote while his family remains there, although he passes his time and works in an adjoining county.—*People v. Holden*, 28 Cal. 124.

CITIZENSHIP OF MARRIED WOMEN: A woman, who is a citizen and remains a resident of the United States, does not become alien by marrying a foreigner, who, before marriage to her, has settled in the United States, and has no intention of returning to his native land, though he has not taken steps looking toward his naturalization.—*Comitis v. Parkerson*, 56 Fed. Rep. 556.

Section 787. Who are Prohibited from Voting: No person is permitted to vote who is under guardianship, idiotic or insane, or who has at any place been convicted of treason, felony, embezzlement of public funds, bartering or selling, or offering to barter or sell, his vote, or purchasing, or offering to purchase, the vote of another, or other infamous crime, and who has not been restored to the right of citizenship, or who at the time of such election is confined in prison on conviction of a criminal offense.

1899, 5th Ses. p. 33, Sec. 3; 1891, 1st Ses. p. 58, Sec. 3, amended by laws of 1893, p. 35, and further amended by laws of 1895, 3d Ses. p. 8.

Section 788. Who do not Lose Residence by Absence: For the purpose of voting no person shall be deemed to

have gained or lost a residence by reason of his presence or absence while employed in the service of this state or of the United States, nor while engaged in the navigation of the waters of this state, or of the United States, nor while a student of any institution of learning, nor while kept at any almshouse or other asylum at the public expense..

1899, 5th Ses. p. 34, Sec. 4; 1891, 1st Ses. p. 59.

Const. Art. VI, Sec. 5.

INMATES OF SOLDIERS' HOME: Where a veteran becomes an inmate of the veterans' home with the intention of making it his permanent residence, the fact that he is supported at public expense does not prevent him from voting in the precinct where the home is located, though the constitution provides that for the purpose of voting, no person may be deemed to have gained or lost a residence, while kept at any almshouse or asylum at public expense. *Stewart v. Kyser*, 105 Cal. 459, 39 Pac. 19. The supreme court of Kansas in *Lawrence v. Leidigh*, 58 Kan. 594, 50 Pac. 600, under constitu-

tional provision identical with that of California and Idaho, held that the inmates of the state's soldiers' home, located at Ford county, who had removed there from other parts of the state, are disqualified from participating in the elections held in such county. Under Sec. 5, Art. 6, Idaho Const., which is identical with the above section, inmates of a soldiers' home can not acquire, by reason of their presence therein, and while kept at public expense, the right to vote in the county and precinct in which such institution is located.—*Powell v. Spackman* (Idaho 1901), 65 Pac. 503. To the same effect is *Wolcott v. Holcomb*, 97 Mich. 363, 56 N. W. Rep. 837.

Section 789. Electors Privileged from Arrest: Electors are privileged from arrest except for treason, felony, or breach of the peace, during their attendance on election.

1899, 5th Ses. p. 34, last part of Sec. 5; 1891, 1st Ses. p. 59.

CHAPTER XXI.

NOMINATIONS OF OFFICERS.

Section.

HOW MADE AND CERTIFIED.

- 790. Conventions and primary meetings.
- 791. Nominations by conventions, how certified.
- 792. Nominations other than by conventions.
- 793. Can nominate but one person for each office.

Section.

- 794. Certificates of nominations, where filed.
- 795. Preservation of certificates.
- 796. Certificates to be filed, when.
- 797. Secretary of state to certify to county auditor.
- VACANCIES, HOW FILLED.**
- 798. Declining nomination, notice of.
- 799. Who may fill vacancies.
- 800. Stickers, when used.

HOW MADE AND CERTIFIED.

Section 790. Convention or Primary Meeting: Any convention or primary nominations to public office, and also electors to the number hereinafter specified, may nominate candidates for public office to be filled by election within the state. A convention or primary meeting, is an organized assemblage of electors or delegates representing a political party or principle.

1899, 5th Ses. p. 35, Sec. 16; 1891, 1st Ses. p. 62, Sec. 25.

CONVENTION OR PRIMARY MEETING, WHAT IS: The statute does not assume to prescribe any number of people requisite to constitute a

"convention or primary meeting."—*Baker v. Scott* (Idaho), 43 Pac. 76. In a suit to enjoin the county clerk from placing on the official ballot the names of certain persons as candidates of the silver republican party,—

the certificate of nomination filed with the clerk purporting to be that of a county convention of said party,—it appeared that the alleged candidates were nominated at a meeting participated in by less than 50 members of the "Silver Republican Club," which had some 400 members; that most of the persons nominated at this meeting were not silver republicans, but men who had already been nominated by various other parties; that no primaries were held, no delegates chosen, no call for a convention made, nor any notice thereof given, other than information of the club's proceedings published in a daily paper as news items, and a statement on a banner that the club met every Wednesday night; that the chairman who presided at the meeting and signed the certificate of nomination did not know till after it was filed that the meeting was a convention, but supposed that it was merely a meeting of the club. Held that such meeting was not a party convention, within the meaning of the statute defining a convention as "an organized assemblage of electors or delegates representing a political party or principle," and authorizing such convention to nominate candidates for public office; and hence the names on the certificate were not entitled to a place on the official ballot.—*State ex rel. Russell et al. v. Tooker* (Mont.), 46 Pac. 530.

A state convention nominating candidates will not be recognized so as to permit the names of the nominees to appear on an official ballot, when it was held by 21 persons, representing only one-fourth of the precincts of a single county, who met without any call for a convention and any notice given, except by word of mouth, or any election as delegates, or any credentials, and immediately assumed to form a new party, and organized themselves into a county convention, and then on the same evening into a state convention.—*State ex rel. Metcalf v. Johnson*, 18 Mont. 548, 46 Pac. 533, 34 L. R. A. 313.

AUTHORITY OF CONVENTION:
A political convention is authorized

to proceed with its business, even though less than a majority of the delegates entitled to seats attend; and the action of a majority of those attending is binding upon the party.—*Whipple v. Broad* (Colo.), 55 Pac. 172. The right of a political convention making the nominations to judge of the election, qualification, and return of its own members, will be recognized by the court in passing upon the rights of nominees to appear upon election ballots; and the right or title of delegates admitted to the convention will not be inquired into.—*Marcum v. Ballot Com'srs.* 42 W. Va. 263, 36 L. R. A. 296. Members of a convention of a political party meeting at a day to which the convention was adjourned, may revoke a nomination made at a prior meeting, though their number is less than the majority of those who made the nomination.—*Phillips v. Smith* (Colo.), 55 Pac. 177. The fact that a convention of party delegates depart from the basic principles of the party, and was in part controlled by members of an antagonistic party, is not such fraud as will vitiate the proceedings of the convention. The action of the regular convention of the delegates of a political party with respect to party policy and principles is not subject to the jurisdiction of the court, in the absence of proof that the convention was improperly influenced, or that its delegates were not members of the party holding the convention.—*Whipple v. Broad* (Colo.), 55 Pac. 172. Where a convention of a political party is regularly called and organized, its nominees, and not those of a convention made up of a minority of the delegates, who withdrew from the regular convention, are entitled to have their certificates filed by the secretary of state, though the delegates violate pledges and disregard the advice of the executive committee, in that it nominates certain men who do not belong to the party, and makes a bargain by which some of its nominees are to retire in favor of the nominees of other parties.—*Hutchinson v. Brown* (Cal.), 54 Pac. 738.

Section 791 Nominations by Conventions, How Certified: All nominations made by such convention or primary meeting shall be certified as follows:

The certificate of nomination, which shall be in writing, shall contain the name of each person nominated, his residence, his business, and the office for which he is named, and shall designate in not more than five words, the party or principle which such convention or primary meeting represents, and it shall be signed by the presiding officer and secretary of such convention or primary meeting, who shall

add to their signatures their respective places of residence and business. Such certificates, made out as herein required, shall be delivered by the secretary or president of such convention or primary meeting to the secretary of state or to the county auditor, as hereinafter required.

1899, 5th Ses. p. 35, Sec. 17; 1891, 1st Ses. p. 62, Sec. 26.

Falsifying certificates of nomination: Penal Code, Sec. 4582.

In determining the regularity of cer-

tificates of nomination for congress, the certificate will be recognized which was issued in accordance with party usage.—*Spelling v. Brown* (Cal.), 55 Pac. 126.

Section 792. Nominations Other Than by Convention :

Candidates for public office may be nominated, otherwise than by convention or primary meeting, in the following manner :

A certificate of nomination, containing the name of a candidate for the office to be filled, with such information as is required to be given in certificates provided for in section 791, shall be signed by electors residing within the district or political division in and for which the officer or officers are to be elected, in the following numbers: The number of signatures, when the nomination is for a state office, shall not be less than three hundred; for a district office, or sub-division of the state including two or more counties, the number of signatures shall not be less than one hundred and fifty; for a county office, not less than fifty; and for a township, precinct or ward office, not less than ten: *Provided*, That the said signatures need not all be appended to one paper. Each elector signing a certificate shall add to his signature his place of residence and his business. Such certificates may be filed as provided for in section 794 in the same manner and with the same effect as a certificate of nomination made by a party convention or primary meeting: *Provided*, That the registrar of each precinct or ward, as the case may be, shall certify to the secretary of state, the county auditor, or the clerk of the municipality, as the case may be, that all the signers of such certificates are qualified electors and registered according to law for the ensuing election.

1899, 5th Ses. p. 36, Sec. 19; 1891, 1st Ses. p. 63, Sec. 28.

NOMINATIONS BY PETITION, NOT PARTY NOMINATIONS: Under the election laws of Idaho, the presentation, in time prescribed by the statutes, of a petition signed by the requisite number of qualified electors, entitled the petitioner to have his name placed upon the official ballot, as an "elector's nominee," of the party designated in the petition, but not upon the regular ticket of any party.—*Phillips v. Curtis*, Secretary of State, (Idaho), 38 Pac. 405. Where political parties are regularly organized and have a party name, candidates nominated by petition of electors belonging to that party are not entitled to be placed on the ballot under the name of that party; party nominations cannot be made by petition.—*State v.*

Fransham, 19 Mont. 273, 48 Pac. 1; *Atkeson v. Lay*, 22 S. W. Rep. 481; *State v. Rotwitt*, 18 Mont. 502, 46 Pac. 370; *State v. Tooker*, 18 Mont. 540, 46 Pac. 530, 34 L. R. A. 315.

SENATOR NOT A STATE OFFICER: A senator is not a state officer in the sense that 300 names are required to a petition to have his name placed upon the official ballot, under the election laws of this state.—*Phillips v. Curtis*, Secretary of State, (Idaho) 38 Pac. 405.

PROVISIONS NOT MANDATORY, WHEN: The provisions of the Australian ballot law prescribing the facts to be stated in the certificate of nomination, and the manner in which the nomination may be declined, and the resulting vacancy filled, should not be considered mandatory, when a question of a failure to comply with them

strictly is raised after an election, the fairness of which is not questioned.—

Stackpole v. Hallahan, 16 Mont. 40, 49 Pac. 80.

Section 793. Can Nominate but One Person for Each Office: No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating more than one person for each office to be filled, and no person shall accept a nomination to more than one office.

1899, 5th Ses. p. 36, Sec. 20; 1891, 1st Ses. p. 64, Sec. 29.

WHO MAY PETITION: In Philips v. Curtis (Idaho), 38 Pac. 405, which was an application by Philips to have his name placed upon the official ballot, as candidate for senator from the 12th senatorial district, by petition signed by 153 electors of said district, it was shown that two of said petitioners had participated in the nomination of another person in the republican convention, and that two had participated in the nomination of Mr. Philips in the democratic convention.

The court struck from the petition the names of the two persons participating in the nomination of another person in the republican convention, and retained the names of the persons who participated in the nomination of Mr. Philips in the democratic convention.

In retaining said latter names, the court says: "We do not think the names of the two persons alleged to have participated in the nomination of Mr. Philips in the democratic convention come within the inhibition of Section 29."

Section 794. Certificates of Nomination, Where Filed: Certificates of nomination of candidates for offices to be filled by the electors of the entire state, or of any division or district greater than a county, shall be filed with the secretary of state. Certificates of nomination for county and precinct officers shall be filed with the auditor of the respective counties wherein the officers are to be elected. Certificates of nomination for municipal offices shall be filed with the clerks of the respective municipal corporations wherein the officers are to be elected.

1899, 5th Ses. p. 35, Sec. 18; 1891, 1st Ses. p. 63, Sec. 27.

Filing or receiving false certificate: Penal Code, Sec. 4582.

Section 795. Preservation of Certificates: The secretary of state and the auditors of the several counties and clerks of the several municipal corporations shall cause to be preserved, in their respective offices, for one year, all certificates of nominations filed in their respective offices. All such certificates shall be open to public inspection under the proper regulations to be made by the officers with whom the same are filed.

1899, 5th Ses. p. 36, Sec. 21; 1891, 1st Ses. p. 64, Sec. 30.

Section 796. Certificates to be filed, When: Certificates of nomination to be filed with the secretary of state shall be filed not more than sixty days and not less than thirty-five days before the day fixed by law for the election of the persons in nomination. Certificates of nomination herein directed to be filed with the county auditor shall be filed not more than sixty days and not less than twenty-five days before election. Certificates for the nomination of candidates for the municipal offices shall be filed with the clerks of the respective municipal corporations not more than thirty days and not less than ten days previous to the day of election: *Provided*, That the time specified for filing certificates of nominations,

as provided in this section, shall not be held to apply to nominations for special elections to fill vacancies caused by death, resignation or otherwise.

1899, 5th Ses. p. 36, Sec. 22; 1891, 1st Ses. p. 64, Sec. 31.

LIMITATIONS OF TIME: A statute which provides that "certificates of nomination shall be filed not less than 30 days before the day of election"

where the last day on which the certificate could be filed falls on Sunday or a legal holiday, the certificate must be filed the day before to be in time.—Griffin v. Dingley, 114 Cal. 481, 46 Pac. 457.

Section 797. Secretary of State to Certify to County Auditor: Not less than thirty days before an election to fill any public office, the secretary of state shall certify to the county auditor of each county, within which any of the electors may by law vote for candidates for such office the names and description of each person nominated for such office, as specified in the certificates of nomination filed with the secretary of state.

1899, 5th Ses. p. 36, Sec. 23; 1891, 1st Ses. p. 64, Sec. 32.

VACANCIES, HOW FILLED.

Section 798. Declining Nomination, Notice of: Whenever any person nominated for public office, shall, at least thirty days before election, except in the case of municipal elections, in a writing signed by him, and certified to by the registrar of the precinct where the person nominated resides, notify the officer with whom the certificate nominating him is required to be filed, that he declines such nomination, such nomination shall be void. In municipal elections such declination must be made at least ten days before the election.

1899, 5th Ses. p. 37, Sec. 24; 1891, 1st Ses. p. 64, Sec. 33.

Section 799. Who May Fill Vacancies: Should any person so nominated die before the printing of the tickets, or decline the nomination, or should any certificate of nomination be or become insufficient or inoperative from any cause, the vacancy or vacancies thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, such committee may, upon the occurring of such vacancies, proceed to fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer, a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and such further information as is required to be given in an original certificate of nomination; the certificate so made shall be executed in the manner prescribed for the original certificate of nomination, and shall have the same force and effect as an original certificate of nomination. When such certificate shall be filed with the secretary of state, he shall, in certifying the nominations to the various county auditors, insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee. And in the event that he has already sent forth his certificate, he shall forthwith certify to the auditors of the proper counties the name and description of the

person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents, and the name of the person for whom such nominee is substituted.

1899, 5th Ses. p. 37, Sec. 25; 1891, 1st Ses. p. 65, Sec. 34.

Original certificate of nomination: Sec. 792.

DEFECTS IN CERTIFICATE, WHEN TO BE TAKEN ADVANTAGE OF: The fact that a certificate of nomination made by the central committee, under proper authority to

fill vacancies caused by the declination of the former nominee, did not state, that the committee had power to fill such vacancies, was not sufficient to render the nomination void, objection being made to the certificate, for the first time, after the election.—*Stackpole v. Hallahan*, 16 Mont. 40, 40 Pac. 80.

Section 800. Stickers, When Used: When any vacancy occurs before election day and after the printing of the tickets and any person is nominated to fill such vacancy, the officer whose duty it is to have the tickets printed and distributed, shall thereupon have printed a requisite number of stickers, and shall mail them by registered letter to the judges of elections in the various precincts interested in such elections and the distributing clerk, whose duty it is made to distribute the tickets, shall affix such stickers in the proper place in each ticket before it is given out to the elector.

1899, 5th Ses. p. 37, Sec. 26; 1891, 1st Ses. p. 65, Sec. 35.

CHAPTER XXII.

ELECTION PRECINCTS AND PRECINCT BOOTHS.

Section.

801. Commissioners must establish precincts.

802. Precincts may be changed, etc., when.

Section.

803. House or place of holding election.

804. Booths for secret voting.

805. Municipal elections.

Section 801. Commissioners Must Establish Precincts. The board of commissioners of each county must establish a convenient number of election precincts therein.

1899, 5th Ses. p. 38, Sec. 28; 1891, 1st Ses. p. 66, Sec. 37.

Section 802. Precincts May be Changed, Etc., When: The board may, from time to time, change the boundaries of, create new, or consolidate established precincts; but they must not alter or change any election precinct, or change the place of holding elections in any precinct, after their regular July meeting next preceding any election: *Provided*, That the precincts and wards established, and the places designated in which to hold elections at the time of the taking effect of this title, shall so remain until changed.

1899, 5th Ses. p. 38, Sec. 29; 1891, 1st Ses. p. 66, Sec. 38.

CHANGING PRECINCTS: The change of election precincts is within the discretion of the board, and in the absence of any action preceding an election, in which such precincts have

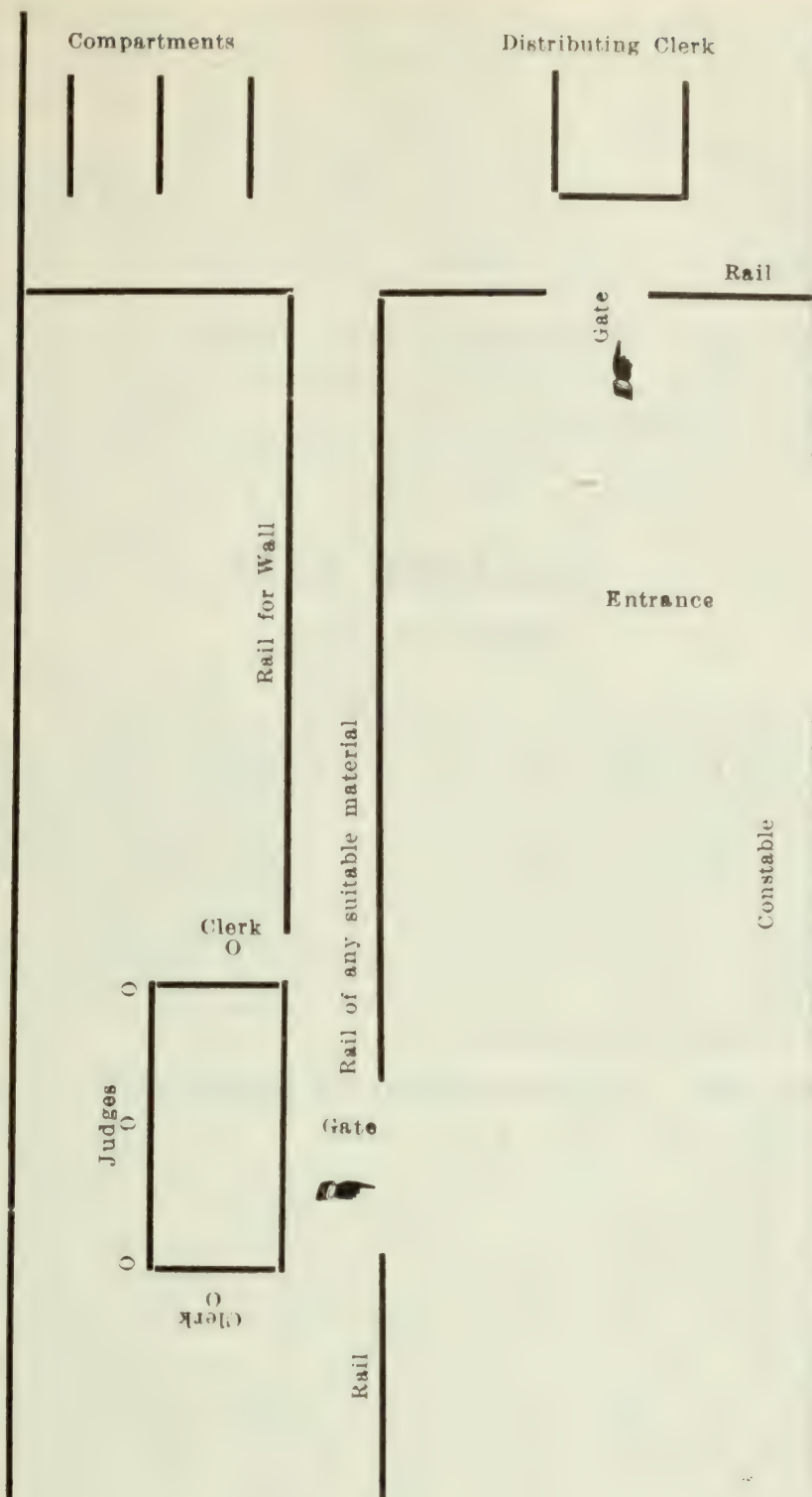
been changed to correct alleged erroneous actions of the board, or to show that a fair election was thereby prevented, an elector cannot thereafter impeach an election held on that ground alone.—*Fragley v. Phelan* (Cal.), 58 Pac. 923.

Section 803. House or Place of Holding Elections: The board must, in its order appointing judges of election, designate

the house or place within the precinct where the election must be held.

1899, 5th Ses. p. 38, Sec. 30; 1891, 1st Ses. p. 66, Sec. 39.

Section 804. Booths for Secret Voting: The county commissioners of each county, at their meeting in July next preceding any general election, shall designate and appoint suitable polling places, throughout the county, and shall cause the same to be suitably provided with a sufficient number of voting shelves or compartments, at or in which voters may conveniently mark their ballots, so that in the marking thereof they may be screened from the observation of others, and a guard rail shall be so constructed and placed that only such persons as are inside said rail can approach within ten feet of the ballot boxes and of such voting shelves, places or compartments as are herein provided for. The arrangement shall be such that neither the ballot boxes nor the voting shelves or compartments shall be hidden from view of those just outside the said guard rail, and such polling places shall be as near as practicable in the following form:



The number of such voting shelves or compartments shall not be less than one for every fifty electors, or fraction thereof, registered in the precinct, and the expense of providing such polling places, compartments, guard rails, and all necessary supplies shall be a public charge, and shall be provided in the same manner as other election expenses. Each voting shelf or compartment shall be kept provided with proper supplies and conveniences for marking the tickets. At their regular meeting in July next preceding any election, the board of county commissioners of each county shall, as far as necessary, alter or divide the election precincts in such manner that each elec-

tion precinct shall not contain more than four hundred voters: *Provided*, That in precincts containing less than twenty-five registered voters the election may be conducted without the preparation of such booths or compartments as required in this section.

1899, 5th Ses. p. 42, Sec. 42; 1891, 1st Ses. p. 72, Sec. 51.

ELECTION BOOTHS: A failure of election officers to provide booths which comply with the law, is a mere

irregularity which will not render void the vote cast in that precinct.—*Moyer v. Van DeVanter* (Wash.), 29 L. R. A. 670, 41 Pac. 60.

Section 805. Municipal Elections: In all municipal elections the duties specified in the preceding section as devolving on the county commissioners shall devolve on the officers in each city or town whose duty it is to designate and appoint polling places therein.

1899, 5th Ses. p. 44, Sec. 43; 1891, 1st Ses. p. 73, Sec. 52.

CHAPTER XXIII.

REGISTRATION.

Section.

- 806. Appointment of registrar.
- 807. Official oath of registrar.
- 808. Time of registration. Notice by commissioners.
- 809. "Election register" and registry of rejected applicants.
- 810. Days of registration. Notice by registrar.
- 811. Examination of applicants for registration.
- 812. Naturalized citizens.
- 813. Entries by registrar in registers.

Section.

- 814. Elector's oath.
- 815. Check lists. Delivery of books to judges.
- 816. Arrangement of "elector's oaths," disposition of.
- 817. Tickets required, based on registration.
- 818. Transfer certificates.
- 819. Refusal to register applicant; proceedings.
- 820. Compensation of registrars.

Section 806. Appointment of Registrar: The board of county commissioners of each county of this state must, at their regular meeting in July, next preceding each general election, appoint a registrar for each election precinct in the county, who must be a qualified elector, resident of such precinct, and otherwise a proper person and qualified to perform the duties of such office, and such registrar may hold his office until his successor is appointed and qualified. When any registrar fails to act, or the office becomes vacant, the said board must appoint another registrar and should the board fail to appoint a registrar, or from any cause none should act, the electors may, on the second Saturday of August, at one o'clock p. m. next preceding any general election, to which this title is applicable, meet at the place in the precinct appointed by said board for the holding of such elections and elect a registrar.

1899, 5th Ses. p. 38, Sec. 31; 1891, 1st Ses. p. 66, Sec. 40.

Penalty for violating provisions:

Penal Code, Sec. 4587.

Refusing to register qualified person:

Penal Code, Sec. 4580.

Section 807. Official Oath of Registrar: Before entering upon the duties of his office, each registrar must take and subscribe, before any officer authorized to administer oaths, the "official oath" required of all officers acting under the laws of the State of Idaho, which, when so taken and subscribed, must be by him filed

with the clerk of the board of county commissioners, and said registrar may thereupon register his own name in the elector's register.

1899, 5th Ses. p. 39, Sec. 33; 1891, 1st Ses. p. 68, Sec. 42.

Section 808. Time of Registration. Notice by Commissioners: The said board must, prior to the first day of August next preceding any general election, cause notice to be given for not less than fifteen days, by publication in some newspaper published in the county, if there be one, otherwise by at least three notices, posted up in different parts of the county, one of which must be at the court house door, of the names and general description of election precincts, the name of the registrar for each, and the time during which registration may be made, which time of registration is as follows:

For every general election, during every Saturday from the first day of August to and including the last Saturday next preceding such election.

1899, 5th Ses. p. 38, first part of Sec. by laws of 1895, 3d Ses. p. 92. 32; 1891, 1st Ses. p. 66, Sec. 41, amended

Section 809. Election Register and Registry of Rejected Applicants: At the time of, or before giving the notice provided for in the preceding section, the board must furnish to each registrar two books, one to be known as the "Election Register," for the registry of qualified electors, and the other for the registry of rejected applicants.

Each of said books must be ruled and headed substantially as follows:

Number	Name of elector.	Dates of rejection or dates of registry.	Age.	Where born.	Description of residence.	Certificate of naturalization. Exhibit. Yes or No.	Remarks.
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Said board must also furnish to the registrar the blank notices, certificates, oaths, and all other blanks, books and papers needed to perform the duties of his office.

1899, 5th Ses. p. 39, last part of Sec. by laws of 1895, 3d Ses. p. 92. 32; 1891, 1st Ses. p. 67, Sec. 41, amended

Section 810. Days of Registration. Notice by Registrar: The registrar must prior to the time of commencement of registration post notices in at least three such public places

in different parts of his precinct as will be most likely to give notice to the inhabitants thereof, giving the time, days and hours during, and the place at which he will be ready to receive and hear applications for registration, and he must thereafter on the days named by him be at the place of registration designated, from the hours of 9 o'clock a. m. to 5 o'clock p. m., and from 7 o'clock p. m. to 9 o'clock p. m., and receive and register the names of all persons applying, who are, or will be, on the day of election for which registration is made, entitled to vote thereat. He must, also, on any other day of the week, except holidays, during said time of registration, register any such elector who may find and apply to him at his place of registration, and he may at any time or place during said time of registration, register any such elector of his precinct.

1899, 5th Ses. p. 39, first part of Sec. 34; 1895, 3d Ses. p. 8, amending laws of 1893, 2d Ses. p. 36, which amended laws of 1891, 1st Ses. p. 68, Sec. 43.

Section 811. Examination of Applicants for Registration: He may, at any time, examine under oath any applicant as to his qualifications, and he must likewise examine, also permit any qualified elector of his county to examine any applicant for registration, either when such applicant is not known to the registrar to be a qualified elector, or when any such qualified elector challenges such applicant and distinctly states his cause of challenge.

All examinations before such registrar must be reduced to writing, when desired by such applicant, challenging elector or registrar, but such examination for any one applicant shall not exceed one-half hour, without the consent of the registrar. If any applicant refuses to answer all questions, give all information under his control, take all other oaths, and do all other acts and things required of him by law, his application must be rejected by the registrar.

1899, 5th Ses. p. 39, Sub. 1, and last part of first paragraph of Sub. 2, Sec. 34; 1895, 3d Ses. p. 8, amending laws of 1893, 2d Ses. p. 36, which amended laws of 1891, 1st Ses. p. 68, Sec. 43.

False registration: Penal Code, Secs. 4580, 4588.

POWER TO ADMINISTER OATH. The supreme court of Idaho in *Territory v. Anderson*, 2 Idaho, 537, 21 Pac. 417, in construing Sections 504 and 505, of the Revised Statutes, which so far as affects said decision are the same as Sections 807 and 811 of this Code, says:

"In regard to the points raised as against the indictment, we think the registrar was competent to administer the oath. While it is true under the general act, which empowers certain persons to administer an oath, the name of the registrar is omitted (see Sec. 334 of this Code), yet under Sections 504 and 505 of the Rev. St. of Idaho, it is perfectly clear that the legislature intended to, and in fact did, by this section, confer upon the registrar the power to administer such oath."

Section 812. Naturalized Citizens: When any applicant claims to be a naturalized citizen the production by him of his certificate of naturalization is prima facie evidence of citizenship. If he cannot produce such certificate, he must state, under oath, positively, the time when, and place and court where, he was naturalized; also he must, by his own, or other testimony, make it satisfactorily appear to such registrar that he has been duly naturalized, but that his certificate thereof has been lost, destroyed or beyond his control, and there-

upon he must be deemed a citizen, and entitled to registration, if otherwise qualified.

1899, 5th Ses. p. 39, first part of Sub.
2, Sec. 34; 1895, 3d Ses. p. 8, amending
laws of 1893, 2d Ses. p. 36, which

amended laws of 1891, 1st Ses. p. 68,
Sec. 43.

Section 813. Entries by Registrar in Registers: When the registrar admits any one to registration he must enter in the proper column of the "electors register" the number, the name in full, (except any middle name which may be by initial) date of registry, age, place of nativity and residence of the elector so admitted. The residence must be so described by giving the house, street, ward, or part of the precinct he resides in, that it may be easily found; also it shall be stated, if a naturalized citizen, whether or not he produced his certificate, and the registrar may, in the column of remarks, add any pertinent notes.

He must also enter the names, with statements similar to the above, of all persons who are refused registration, in the book kept for that purpose, and therein state the reasons of such refusal.

1899, 5th Ses. p. 40, Sec. 34, Sub. 3;
1895, 3d Ses. p. 8, amending laws of
1893, 2d Ses. p. 36, which was an

amendment of laws of 1891, 1st Ses. p.
70, Sec. 43.

Section 814. Elector's [Oath: The registrar, must before he registers any applicant, require him to take and subscribe the oath to be known as the "elector's oath," which is as follows:
Elector's Oath.

I do swear (or affirm) that I am a citizen of the United States, of the age of twenty-one years, or will be the day of, A. D. 19...., (naming date of next succeeding election) that I have (or will have) actually resided in this state for six months and in the county for thirty days next preceding the next ensuing election, (in case of any election requiring a different time of residence so make it), that I have never been convicted of treason, felony, embezzlement of public funds, bartering or selling or offering to barter or sell my vote, or purchasing or offering to purchase the vote of another, or other infamous crime, without thereafter being restored to the rights of citizenship; that I will not commit any act in violation of the provisions in this oath contained; that I am not now registered, or entitled to vote, at any other place in this state; that I do regard the constitution of the United States and the laws thereof, and the constitution of this state and the laws thereof, as interpreted by the courts, as the supreme law of the land; (when made before a judge of election add: "And I have not previously voted at this election") so help me God.

Subscribed and sworn to before me this day of
A. D. 19....

.....
Register of precinct county, Idaho.

1899, 5th Ses. p. 40, Sec. 34, last part
of Sub. 2; 1895, 3d Ses. p. 8, amending
laws of 1893, 2d Ses. p. 36, which was

an amendment of laws of 1891, 1st Ses.
p. 70, Sec. 43.
Note.—The word "male" stricken out

by Commission to conform to constitutional amendment giving right of suffrage to women.

TEST OATH, VALIDITY OF: The elector's oath enacted at the first session of the legislature of the state of Idaho, and approved February 25, 1891, held not to be an *ex post facto* law, not in the nature of a bill of attainder, and to be clearly within the constitutional power of the legislature.—*Shepherd v. Grimmett*, 2 Idaho, 1123, 31 Pac. 793.

Note.—The oath prescribed by act of 1891, 1st Ses. p. 69, was very different from the oath now required; see constitutional provision, Art. VI, Sec. 3.

RIGHT OF SUFFRAGE: The right of suffrage is not a natural right, or unqualified personal right, but in a territory is a right conferred by law,

which may be abridged or withdrawn by the authority which conferred it, subject to constitutional limitations and restrictions. The act of the legislative assembly of the territory of Idaho, passed at its 13th session, creating additional disqualifications for voting, and prescribing a test oath, as a mode of ascertaining the qualifications of persons offering to vote, is not in violation of the constitution of the United States.—*Innis v. Bolton*, 2 Idaho, 407, 17 Pac. 264; see also *Hayward v. Bolton*, 2 Idaho, 417, 17 Pac. 457.

Note.—The act of the 13th session of the territorial legislature, p. 110, Sec. 16, is, so far as it covers the subject of polygamy, very similar to Section 3 of Art. VI of the constitution.

Section 815. Check List. Delivery of Books to Judges:

During the time between the last day of registration and the day of election, each registrar must prepare from his "elector's register" two "check lists" of all the names registered by him, arranged alphabetically according to the surname, placing on the left of a name the same number it bears in the "elector's register," and on the right of the column of names a blank column in which to indicate by the word "voted" when the elector votes; said "check lists" must have a heading, showing for and at what election it was prepared and used; they must be carefully prepared without interlineations, in legible writing, certified and sworn to by the registrar, and not later than the next day preceding the election he must deliver to one of the judges of election of his precinct his "elector's register," and the register containing the names of those refused registration, and to the other two judges, who are not of the same political party, a copy of each of said "check lists," and such judges must, as the electors vote, write the word "voted" opposite their names in said "check list" while the clerks of election keep the record of electors voting, as elsewhere provided in the election law.

1899, 5th Ses. p. 40, Sec. 34, Sub. 4; amendment of laws of 1891, 1st Ses. p. 1895, 3d Ses. p. 8, amending laws of 70, Sec. 43.
1893, 2d Ses. p. 36, which was an

Section 816. Arrangement of "Elector's Oaths;" Disposition of:

Each registrar, after so preparing his "check lists," must arrange the "elector's oaths" taken before him in the order the names of the electors who took them appear upon the "check lists," and attach them together, putting the names under each letter in a separate package; and all such oaths, certificates and written testimony taken by the registrar, and the register books of electors and persons rejected, delivered to said judges, and other election returns, must all be transmitted to the clerk of the board of county commissioners, who must preserve the same for at least one year.

1899, 5th Ses. p. 41, last part of Sec. 35; 1891, 1st Ses. p. 71, Sec. 44.

Section 817. Tickets Required Based on Registra-

tion : Each registrar must, twenty-five days previous to the day of election, notify the clerk of the board of county commissioners of their respective counties of the probable number of tickets required for the precinct in which he is registrar, basing his estimate upon the number of registered electors, allowing a sufficient number for contingencies.

1899, 5th Ses. p. 41, Sec. 36; 1891, 1st Ses. p. 71, Sec. 45.

Section 818. Transfer Certificates: When a registered elector desires to remove from a precinct where he is registered, he may, at any time before the registrar has closed his registration books, apply to such registrar to have his name stricken from the register, and the registrar must then strike the name of such elector from the register, and shall deliver to said elector a transfer certificate substantially in the following form, to-wit:

Transfer Certificate.

“This certifies that was on the day of 19... duly registered in precinct, in the county of, State of Idaho; and that at his own request his name has been this day erased from the official register of said precinct.

“Witness my hand this day of 19....
.....

“Registrar of precinct, county, Idaho.”

Such transfer certificate shall entitle the elector named therein to be registered in any other precinct in the same county, if it be filed with the registrar of such other precinct at any time before the close of the last day of registration.

Any elector who has taken out a transfer certificate as in this section provided, may personally file the same with the registrar of the precinct in which he desires to register and vote, or he may send his transfer certificate to such registrar by registered mail. If the elector file his transfer certificate personally, he shall be treated as any other applicant for registration; if the elector send his transfer certificate by mail to the registrar, his name shall be entered in the official register and check lists; and on the check lists, opposite the name of each elector who has filed a transfer certificate personally, the registrar shall enter the words, “registered by certificate,” and opposite the name of each elector who has sent his transfer certificate by mail the registrar shall enter “registered by certificate by mail,” and the “registry” number appearing upon the envelope in which the transfer was sent to him. Upon the day of election when an elector registered by transfer certificate by mail offers to vote, the judges of election, or one of them, shall before receiving and depositing the ballot, administer to such elector the same oath that is required to be taken before registrars by all electors applying for registration, and shall require such elector to exhibit the original registered letter receipt issued to him when he mailed his transfer certificate to the registrar, and the number on the check list opposite the name of such elector must correspond with the number on the registered letter receipt.

1899, 5th Ses. p. 41, Sec. 37; 1893, 2d Ses. p. 93, amending laws of 1891, 1st Ses. p. 71, Sec. 46.

TRANSFER CERTIFICATE: In a county where there are no election precincts properly established and bounded, an elector of the county, properly registered by any register agent therein, can legally take a transfer certifi-

cate, which will enable him to have his name registered at any other polling place in the same county, at any time before the delivery of the certified copy of the register to the judges of the election. When so registered he will be entitled to vote at such polling place.—State v. Sadler (Nev.), 58 Pac. 284.

Section 819. Refusal to Register Applicant, Proceedings: Should any registrar at any time refuse to register any applicant, such applicant may apply to the district court, or the judge thereof, for a writ of mandate to compel the registrar to register him, and the provisions of the Code of Civil Procedure in similar proceedings are applicable.

1899, 5th Ses. p. 42, Sec. 38; 1891, 1st Ses. p. 71, Sec. 47.

Writ of mandate: Code Civil Proc. Sec. 3768 et seq.

Section 820. Compensation of Registrars: The several registrars shall receive such compensation as shall be allowed by the board of county commissioners, which in no case shall exceed twenty-five cents for each name registered, and the compensation herein provided for shall be paid out of the "current expense" fund.

1899, 5th Ses. p. 42, Sec. 39; 1891, 1st Ses. p. 72, Sec. 48.

CHAPTER XXIV.

PRINTING AND DISTRIBUTION OF BALLOTS.

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- 821. County auditor must provide ballots.
- 822. School and municipal elections.
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Section.

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- 827. Auditor must deliver to judges of election.
- 828. Auditor must keep record of tickets furnished.
- 829. Manner of delivering tickets.

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FORM OF BALLOTS.

Section 821. County Auditor Must Provide Ballots: Except as in this title otherwise provided, it shall be the duty of the county auditor of each county to provide printed ballots for every election for public officers in which electors, or any of the electors, within the county participate, and cause to be printed in the ballot the name of every candidate whose name has been certified to or filed with the county auditor in the manner provided for in chapter XXI. Ballots, other than those printed by the respective county auditors according to the provisions of this title shall not be cast or counted in any election. Nothing in this title contained shall prevent any voter from writing on his ticket the name of any person for whom he desires to vote for an office, and such vote shall be counted the same as if printed upon the ballot and marked by the voter. The voter may place a cross (x) opposite the name he has written, but his hav-

ing written the name of his choice is sufficient evidence that such is the person for whom he desires to vote.

1899, 5th Ses. p. 44, Sec. 46; 1891, 1st Ses. p. 74, Sec. 55.

THE POWER OF THE LEGISLATURE TO PRESCRIBE AN OFFICIAL BALLOT: It is competent for the legislature to prescribe an official ballot, and prohibit the use of any other, and it may also provide for printing the names of candidates regularly nominated by a convention or mass meeting, or who run as independents, but it cannot restrict the

elector from voting for whom he pleases.—State ex rel. Lamar v. Dillon, 32 Fla. 545, 22 L. R. A. 124, 14 So. 383.

A statute requiring the use of an official ballot may properly be deemed necessary by the legislature in order to secure to the voter a full and fair election and an accurate and honest count, and does not impair the constitutional right of the voter.—Cole v. Tucker, 164 Mass. 486, 29 L. R. A. 668, 41 N. E. 681.

Section 822. School and Municipal Elections: Elections for school district officers are excepted from the provisions of the preceding section. In all municipal elections the duties specified in the preceding section as devolving on the county auditor shall devolve on the municipal clerk.

1899, 5th Ses. p. 44, Sec. 47; 1891, 1st Ses. p. 75, Sec. 56.

Section 823. Style, Form and Contents of Ballots: All election tickets prepared under the provisions of this title shall be white in color, and of a good quality of printing paper, and the names shall be printed thereon in black ink. Every ticket shall contain the names of every candidate whose nomination for any office specified in the ticket has been certified or filed according to the provisions of this title, and no other names. The ticket shall be of sufficient size to contain the names of all the candidates and questions to be voted on, exclusive of the stub or counterfoil. The width of the stub or counterfoil shall be two inches, and of the same length as the ticket. Each stub shall be consecutively numbered, beginning with number one; the ticket and stub being connected by a perforated line. The width of the ticket shall be divided into as many equal parts by lines the whole length of the ticket, as hereinafter shown, as there are political principles or parties represented by the candidates; each of said parts or divisions to have a heading or caption designating the political principles or party represented by the several candidates, and said headings or captions shall be printed on one straight line, and in the size of type known as long primer. One of such divisions of spaces shall have no heading or caption the names of the officers to be filled and questions to be submitted shall be printed as on other portions of the ticket and printed in the same continuous straight line, leaving the space below the office designated, so that the voter may write the name (of he so desires) of the person for whom he wishes to vote: *Provided*, A space or margin within which is inscribed a circle one-half inch in diameter is allowed to the right of the name of each candidate or question to be submitted for the voter to designate by placing a cross mark (x) within said inscribed circle opposite the name of the person for whom he wishes to vote, and his answer to the questions and on the ticket may be printed such words as will aid the voter to do this, as "Vote for

one," "Vote for three," "Yes," "No," and the like. The names of candidates for the offices of electors of president and vice-president of the United States shall be arranged in groups under the political heading or principle designated by the several certificates of nominations or nomination papers. Whenever a constitutional amendment is submitted to the vote of the people the question submitted shall be placed on the official ballot at the top thereof next above the heading or caption designating the political principles or parties; when other questions are submitted to the vote of the people, such questions shall be printed upon the ticket after the lists of candidates. The names of the persons voted for shall be printed in long primer capitals, the names of the office in small capitals, and both without spaces except between the different words or initials of each line. The same margins shall be left above the printed matter as below it, and the side margins must be of equal size. The lines must be straight and the matter single ruled, and the face of the ticket and stub must be substantially in the following form:

No. 1.

Constitutional Amendment				Yes <input type="radio"/>	No <input type="radio"/>
REPUBLICAN		DEMOCRATIC		POPULIST	
FOR CONGRESS		FOR CONGRESS		FOR CONGRESS	
A. B.	<input type="radio"/>	C. D.	<input type="radio"/>	E. F.	<input type="radio"/>
FOR GOVERNOR		FOR GOVERNOR		FOR GOVERNOR	
G. H.	<input type="radio"/>	I. J.	<input type="radio"/>	K. L.	<input type="radio"/>
FOR STATE SENATOR		FOR STATE SENATOR		FOR STATE SENATOR	
M. N.	<input type="radio"/>	O. P.	<input type="radio"/>	Q. R.	<input type="radio"/>
Vote for Two [2] FOR HOUSE OF REPRESENTATIVES		Vote for Two (2) FOR HOUSE OF REPRESENTATIVES		Vote for Two (2) FOR HOUSE OF REPRESENTATIVES	
S. T.	<input type="radio"/>	U. V.	<input type="radio"/>	W. X	<input type="radio"/>
Y. Z.	<input type="radio"/>	A. B.	<input type="radio"/>	C. D.	<input type="radio"/>
FOR SHERIFF		FOR SHERIFF		FOR SHERIFF	
E. F.	<input type="radio"/>	G. H.	<input type="radio"/>	I. J.	<input type="radio"/>
FOR COUNTY RE- CORDER		FOR COUNTY RE- CORDER		FOR COUNTY RE- CORDER	
K. L.	<input type="radio"/>	M. N.	<input type="radio"/>	Q. P.	<input type="radio"/>
Shall bonds be sold for school house?					Yes <input type="radio"/>
					No <input type="radio"/>

"STUB"
Name of County. Date of Election.
Perforated Line.

1899, 5th Ses. p. 44, Sec. 48; 1895, 3d Ses. p. 75, Sec. 57.
Ses. p. 94, amending laws of 1891, 1st

**Section 824. Questions Submitted. Placed on Bal-
lot:** Whenever the secretary of state has duly certified to the county auditor any question to be submitted to a vote of the people, the county auditor shall have printed on the regular tickets the question, in such form as will enable the electors to vote upon the question so presented. The county auditor shall also prepare the necessary tickets whenever any question is required by law to be submitted to the vote of the electors of any locality, and not to the state generally: *Provided, however,* That in all questions sub-

mitted to the voters of a municipal corporation alone, it shall be the duty of the municipal clerk to provide the necessary tickets.

1889, 5th Ses. p. 46, Sec. 49; 1891, 1st Ses. p. 76, Sec. 58.

Section 825. Error or Omission in Publication:

Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or descriptions of the candidates nominated for office, or in the printing of the tickets, the probate court of the county may upon application of any elector, by order, require the county auditor or municipal clerk to correct such error, or to show cause why such error should not be corrected.

1899, 5th Ses. p. 46, Sec. 50; 1891, 1st Ses. p. 77, Sec. 59.

CANNOT RAISE OBJECTION AFTER ELECTION: Where a candidate for a county office neglects to have an alleged defect in the official ballot corrected as provided by this section, he cannot, after the election is had, and he finds himself defeated, raise the objection that the name of the successful candidate was improperly placed upon the official ballot.—*Baker v. Scott* (Idaho), 43 Pac. 76; *State v. Fransham*

(Mont.), 48 Pac. 1.

DISQUALIFICATION OF JUDGE: The mere fact that the local district judge was a candidate for re-election, and thus disqualified from sitting in proceedings to correct errors in the official ballot, does not justify proceedings after the election, based on errors in the official ballot which could have been corrected by an application to another judge.—*State v. Fransham* (Mont.), 48 Pac. 1.

Section 826. What Ballots Must be Voted and Counted:

No ballot must be used or counted at any election except the legal ballot printed by the county auditor, or, in the case of municipal elections, by the clerk of the municipality, and distributed according to law by the distributing clerk within the polling place. And no ticket must be distributed by the distributing clerk, or permitted to be used by the election officers, which has any mark or thing on the back or outside thereof whereby it might be distinguished from any other ballot legally used on the same day. No ballot or ticket printed in imitation of the legal ticket furnished by the county auditor, or, in the case of municipal elections, by the clerk of the municipality, according to law, shall be circulated on the day of election, or brought into the polling place, and no elector shall be permitted to vote any other ballot than the one he received from the distributing clerk.

1899, 5th Ses. p. 47, Sec. 51; 1891, 1st Ses. p. 77, Sec. 60.

See note to Sec. 870.

WHAT BALLOTS MAY BE COUNTED: Ballots will not be vitiated, in the absence of fraud, by the fact that the official stamp required by statute to be placed on them was not so placed until they were returned by the electors to be placed in the box, having gone into the possession of the electors unstamped.—*Moyer v. Van De Venter* (Wash.), 29 L. R. A. 670, 41 Pac. 60. Ballots deposited without detachment from number stub are valid.—*State v. Sadler* (Nev.), 58 Pac. 284. Where electors vote the official ballots supplied to them by the judges of election, their legally expressed will

cannot be overthrown, where they are not at fault, by the fact that the public officer who prepared the ballots in some way neglected his duty.—*State v. Fransham* (Mont.), 48 Pac. 1; and a ballot cast by an elector at an election should not be rejected simply because it differs from the regulations prescribed in the Code, in matters over which the elector has no control, such as the size of the ballot, the kind of paper on which it is printed, or the character of type, or heading used in printing.—*Kirk v. Rhoads*, 46 Cal. 399.

Where the election officers of a township were furnished by the county clerk with official ballots printed on white paper, and also with sample ballots

printed on colored paper, in a separate package, and where by mistake the sample ballots were used by all the voters of that township, and the official ballots on white paper were all returned unused by the judges of election, and the election in such township was con-

ducted regularly in every other respect and the ballots used by the electors of all the political parties were of the same color, Held, that such ballots were rightly counted.—Boyd v. Mills, 53 Kan. 594, 37 Pac. 16.

DISTRIBUTION.

Section 827. Auditor Must Deliver to Judges of Election: It shall be the duty of the county auditor of the county (or the municipal clerk in the case of municipal elections) to furnish and cause to be delivered to the judges of election of each election precinct within the county (or within the municipality in case of municipal elections), and in which the election is to be held, at the polling place of the precinct before the opening of the polls, the proper number of tickets as required by this title: *Provided*, That not less than one hundred tickets shall be furnished for each fifty or fraction of fifty electors registered in each precinct in the county, and in the case of municipal elections, each precinct in the municipality.

1899, 5th Ses. p. 47, Sec. 53; 1891, 1st Ses. p. 77, Sec. 62.

Section 828. Auditor Must Keep Record of Tickets Furnished: The county auditor of each county shall keep a record of the number of tickets printed and furnished to each polling place and preserve the same for one year.

1899, 5th Ses. p. 47, Sec. 54; 1891, 1st Ses. p. 78, Sec. 63.

Section 829. Manner of Delivering Tickets: The required number of tickets, together with the official stamp and ink pad for the purpose of stamping or designating the official tickets, as hereinbefore provided, shall be delivered to the judges of election in sealed packages, with marks on the outside clearly designating the polling place for which they were intended, upon receipt of which at least a majority of the judges of election must return receipts therefor to the county auditor in case of county elections (and to the clerk of the municipality in the case of municipal elections) and the several auditors and clerks shall preserve the receipts for one year.

1899, 5th Ses. p. 47, Sec. 55; 1891, 1st Ses. p. 78, Sec. 64.

GENERAL PROVISIONS.

Section 830. Posting Instructions, Sample Tickets, Etc.: The county auditor of each county, in case of a general election, and the several city clerks in case of city elections, shall prepare full instructions for the guidance of voters at such elections, as to obtaining tickets as to the manner of marking them and as to obtaining new tickets in place of those accidentally spoiled, and they shall respectively cause the same, together with copies of sections three, four and five of an act relating to crimes against the election franchise, to be printed in large, clear type, on separate cards to be called cards of instruction. The county auditor of each county, and the several city clerks, (in case of a municipal election), shall furnish four such cards to the judges of election in each elec-

tion precinct, and one additional card for each fifty registered electors or fractional part thereof at the same time and in the same manner as the printed tickets. The judges of election shall post not less than one of such cards in each place or compartment provided for the preparation of tickets, and not less than three of such cards elsewhere in and about the polling places, upon the day of election. The county auditor of each county (and the several city clerks, in case of a municipal election) shall cause to be printed on tinted or colored paper, without official endorsement of any kind, and furnish to the judges of election of each election precinct, at the same time and in the same manner as the official tickets and official stamps, six sample or specimen tickets and one additional sample ticket for each fifty registered electors or fractional part thereof in the precinct. The sample tickets shall be printed like the official or regular tickets, and the same size without the stub. There shall be posted in each of the compartments or booths, one of the sample tickets without the official stamp, and not less than four such tickets posted elsewhere in and about the polling places on the day of election. It shall be the duty of the same officers, at the same time and in the same manner, to provide and furnish to each polling place proper and necessary supplies and conveniences for marking the tickets.

1899, 5th Ses. p. 47, Sec. 56; 1891, 1st
Ses. p. 78, Sec. 65.

Sec. 4583.

Destroying supplies: Penal Code,

Placing other matter in booth: Penal
Code, Sec. 4589.

CHAPTER XXV.

ELECTION OFFICERS AND CONDUCT OF ELECTIONS.

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OFFICERS.**Section 831. Judges of Election and Distributing Clerk:**

It is the duty of the county commissioners, at their regular session in July next preceding a general election, to appoint four capable and discreet persons possessing the qualifications of electors, at each election precinct, three of such persons to act as judges of election, and one to act as distributing clerk of election; and the clerk of the board must make out and deliver to the sheriff of the county, immediately after the appointment of such judges and distributing clerk, a notice thereof, in writing, directed to the judges and distributing clerk so appointed; and the sheriff, within ten days of the receipt of said notice, must serve the same upon each of the said judges and distributing clerk of election by registered mail. If in any precinct any of said judges or distributing clerk do not serve, the voters of said precinct may elect a judge or judges or distributing clerk to fill the vacancy on the morning of the election, to serve at such election.

1899, 5th Ses. p. 42, Sec. 40; 1891, 1st Ses. p. 72, Sec. 49.

Crimes against the elective franchise: Penal Code, Chap. CCX.

FAILURE TO APPOINT REQUIRED NUMBER: Where commissioners were authorized to appoint election off-

cers for each precinct, their failure to appoint as many officers as they were authorized to appoint for election was a mere irregularity not sufficient to invalidate the election.—Fragley v. Phelan et al. (Cal.), 58 Pac. 923.

Section 832. Officers Must Represent All Political Parties:

The selection of officers must, as nearly as practicable, represent all the different political parties or principles as represented by the nominees in each county.

1899, 5th Ses. p. 42, Sec. 41; 1st Ses. p. 72, Sec. 50.

EFFECT OF APPOINTMENTS FROM ONE PARTY: Except in cases of fraud, votes are not invalidated by

the violation of the statute prohibiting appointment of election officers from the same political party.—State ex rel. McMillan v. Sadler (Nev.), 58 Pac. 284.

Section 833. Oath of Officers: Before opening the polls, all officers of election must take and subscribe an oath to faithfully perform the duties imposed upon them by law.

Any elector of the township may administer and certify such oath.

1899, 5th Ses. p. 48, Sec. 58; 1891, 1st Ses. p. 79, Sec. 67.

Section 834. Voters May Elect to Fill Vacancy: If in any precinct any of said judges or distributing clerk do not serve, the voters of said precinct may elect a judge or judges or distributing clerk to fill the vacancy, on the morning of the election, to serve at such election.

1899, 5th Ses. p. 49, Sec. 62; 1891, 1st Ses. p. 80, Sec. 71.

Section 835. Must Elect from Different Parties:

The election of officers must, as nearly as practicable, represent all the different political parties or principles as represented by the nominees in each county.

1899, 5th Ses. p. 49, Sec. 63; 1891, 1st Ses. p. 80, Sec. 72.

Section 836. Clerks of Election. Terms of Officers:

The judges must choose two persons having similar qualifications with themselves to act as clerks of the election.

The said judges and distributing clerk, shall be and continue judges and distributing clerk of all elections of civil officers to be held in their respective wards or precincts, until other judges and distributing clerk are appointed, and the said clerks of election may continue to act as such during the pleasure of the judges of election; and the county commissioners must, from time to time, fill all vacancies which may occur in the office of judges of election and distributing clerk at any election precinct within their respective counties.

1899, 5th Ses. p. 49, Sec. 67; 1891, 1st Ses. p. 80, Sec. 76.

Section 837. Compensation of Election Officers:

It is the duty of the clerk of the board of commissioners of each county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of the election are entitled for their services, and lay the same before the county commissioners at their next session, and the board of commissioners must order the compensation paid out of the county treasury. The compensation of judges of election and clerks is four dollars per day, and of constables, on duty at polling places, three dollars per day.

1899, 5th Ses. p. 48, Sec. 57; 1891, 1st Ses. p. 79, Sec. 66.

Section 838. Duty of Constable: The constable of the precinct shall be in attendance at the polling place on the day of election, and, where there is no constable, the judges of election may appoint some capable person to act as such during the election, and he shall have the power to make arrests for disturbance of the peace, as provided by law for such officers, and he shall allow no one within the guard rail of the polling place except those who go to vote, and shall allow but one elector in a compartment at one time.

1899, 5th Ses. p. 51, Sec. 76; 1891, 1st Ses. p. 83, Sec. 85.

SUPPLIES.

Section 839. Official Election Stamp. Tickets: The board of county commissioners shall, at their regular meeting in July next preceding a regular election, make provision for an official election stamp (which must bear the "date" and "year" of the election at which it is used, and the words "official ballot"), of such character or device, and of such material, as said board may select, and such official stamp must be changed at each general election and kept secret by the officers furnishing and using it, as provided by law, and no one else must know of its form or make, until used according to

law. It is also the duty of the county commissioners, at their regular session in July next preceding a general election, to authorize the county auditor to provide a suitable number of election tickets for the county, said tickets to be printed under the same regulations as other county printing. The tickets must be bound in book form, each book containing one hundred tickets and printed in the manner prescribed by law.

1899, 5th Ses. p. 44, Sec. 44; 1891, 1st Ses. p. 74, Sec. 53.

Tickets, form of: Sec. 823.

Section 840. Ballot Boxes: The county commissioners must provide, at the expense of the county, suitable ballot boxes, with lock and key, and an opening in the lid sufficient to admit a single folded ballot, and no larger, and similar boxes for the use of the distributing clerks, in which they shall deposit defaced, mutilated and returned ballots. The keys must be delivered to one of the judges designated by the board.

1899, 5th Ses. p. 44, Sec. 45; 1891, 1st Ses. p. 74, Sec. 54.

CONDUCT OF ELECTIONS.

Section 841. Opening and Closing the Polls: At all elections to be held under this title, the polls must be opened at the hour of eight o'clock in the forenoon, if the regularly appointed judges of election and distributing clerk are present; but in case they are not present, then the polls must not be opened by judges or distributing clerk elected until the hour of nine o'clock, unless a majority of the regularly appointed judges are present, and the polls must continue open until seven o'clock in the evening of the same day, at which time the polls must be closed; and upon opening the polls, one of the clerks, under the direction of the judges, must make proclamation of the same; and thirty minutes before closing the polls, proclamation must be made in like manner, and the polls closed in half an hour thereafter.

1899, 5th Ses. p. 48, Sec. 59; 1891, 1st Ses. p. 79, Sec. 68.

AUTHORITY FOR AND VALIDITY OF ELECTIONS: An election cannot take place under the constitution without statutory regulation. All the efficacy given to the act of casting a ballot is derived from the law-making power and through legislative enactments; and the legislature must provide for

and regulate the conduct of an election, or there can be none.—*McKune v. Weller*, 11 Cal. 49. The validity of an election does not depend upon the eligibility of the candidates voted for, but upon its being held and conducted at the proper time and place, in the manner and by the proper persons and officers as required by law.—*Satterlee v. San Francisco*, 23 Cal. 315.

Section 842. Changing Place of Election: Whenever it shall become impossible or inconvenient to hold an election at the place designated therefor, the judges of election, after having assembled as near as practicable to such place, and before receiving any vote, may adjourn to the nearest convenient place for holding the election, and at such adjourned place forthwith proceed with the election.

1899, 5th Ses. p. 48, Sec. 60; 1891, 1st Ses. p. 79, Sec. 69.

CHANGING POLLING PLACES: If

the judges of an election open the polls and hold the same at a place not authorized by the board of supervisors,

and at a distance from the place appointed by the board of supervisors for holding the same, without any excuse therefor, the election is invalid, and the

votes there cast should be rejected and disallowed.—Knowles v. Yates, 31 Cal. 82.

Section 843. Proclamation of Change of Place: Upon adjourning any election, as provided in the preceding section, the judges shall cause proclamation thereof to be made, and shall post a notice upon the place where the adjournment was made from, notifying electors of the change of polling place.

1899, 5th Ses. p. 48, Sec. 61; 1891, 1st Ses. p. 80, Sec. 70.

Section 844. Exhibiting and Closing Ballot Boxes: Before receiving any ballots the judges must, in the presence of any persons assembled at the polling place, open and exhibit, close and lock the ballot boxes, and thereafter they must not be removed from the polling place until all the ballots are counted, nor must they be opened until after the polls are finally closed and in the presence of the bystanders, except as provided in section 874.

1899, 5th Ses. p. 49, Sec. 64; 1891, 1st Ses. p. 80, Sec. 73.

REMOVING BALLOT BOX: Under a statute providing that the polls must be open at sunrise and kept open until 5 p. m., and that the ballot boxes must not be removed from the polls or the

presence of the bystanders, it was held that the votes cast at a precinct, where the polls were not opened until 10 a. m., and the ballot box was taken by the election officers with them to dinner, were void.—Tebbe v. Smith, 108 Cal. 101, 41 Pac. 454.

Section 845. Judges Must Break Seals Publicly: The judges of election, on the opening of the polls, must break the sealed packages of election tickets, official stamp and other supplies, in the presence of bystanders.

1899, 5th Ses. p. 49, Sec. 65; 1891, 1st Ses. p. 80, Sec. 74.

Section 846. Judges May Administer Oath and Challenge Voters: Any judge may administer the oath and certify the same required to be administered during the progress of an election, and any judge may challenge a voter of whom he is in doubt as to his qualifications to vote, but in such case one of the remaining judges must administer the oath.

1899, 5th Ses. p. 49, Sec. 66; 1891, 1st Ses. p. 80, Sec. 75.

VOTING.

Section 847. When May Commence, How Long Continue: Voting may commence as soon as the polls are opened, and may continue during all the time the polls remain open.

1899, 5th Ses. p. 51, Sec. 72; 1891, 1st Ses. p. 83, Sec. 81.

Electioneering in vicinity of polls: Penal Code, Sec. 4584.

Section 848. How Voter May Secure Ticket: An elector desiring to vote shall give his name and, if requested so to do, his residence, to one of the clerks of election, who shall thereupon announce the same in a loud and distinct tone of voice, clear and audible, and if such name is found on the check list by the election officer having charge thereof, he shall likewise repeat the said name, and the voter shall be allowed to enter the space enclosed by the

guard rail as hereinbefore provided. The distributing clerk shall give him one, and only one, ticket, and his name shall be immediately checked on said list by placing a mark on the registry list to denote that he has received a ticket, and the ticket must be stamped on the back and near the top of the ticket with the "official stamp" by the distributing clerk, and thereupon delivered to the elector. Besides the election officers not more than one voter in excess of the voting shelves or compartments provided shall be allowed in said enclosed space at one time.

1899, 5th Ses. p. 49, Sec. 68; 1891, 1st Ses. p. 81, Sec. 77.

Intimidating voters: Penal Code, Sec. 4576.

Riotous conduct at elections: Penal Code, Sec. 4577.

Influencing voter: Penal Code, Sec. 4585, 4586.

WHO ENTITLED TO VOTE: An elector whose name appears on a check list or copy of an official register furnished an official officer by the regular registrar is entitled to vote, although he is registered by one illegally acting for the registrar.—*State ex rel. McMullan v. Sadler* (Nev.), 58 Pac. 284.

Section 849. Marking and Depositing Ticket: On receipt of his ticket, the voter shall forthwith and without leaving the enclosed space, retire alone to one of the voting shelves or compartments so provided, and shall prepare his ticket by marking in the appropriate margin, or place a cross (X) opposite the name of the candidate of his choice for each office to be filled or by filling in or writing the name of the person for whom he wishes to vote in the blank space provided therefor in the column or division of the ticket for that purpose provided, and marking a cross (X) opposite thereto; and in case of a question submitted to a vote of the people, by marking in the appropriate margin or space a cross (X) against the answer for which he desires to give. Before leaving the voting shelf or compartment the voter shall fold his ticket, without displaying the marks thereon, and so as to expose the impression of the official stamp on the back, and he shall keep the same so folded until he has voted. He shall then hand his ballot to one of the judges and announce his name. He shall mark his ticket or ballot without delay, and shall quit said enclosed space as soon as he has voted.

1899, 5th Ses. p. 49, first part of Sec. 69; 1895, 3d Ses. p. 97, amending laws of 1891, 1st Ses. p. 81, Sec. 78.

What votes shall be counted: Sec. 870.

BALLOTS, MARKING OF: The provisions of the Australian ballot law, concerning the marking of ballots, are amendatory, and must be substantially complied with by the voter in order to have his vote counted.—*Taylor v. Bleakley*, 55 Kan. 1, 39 Pac. 1045; *Richardson v. Jamison*, 55 Kan. 16, 39 Pac. 1050; *Lay v. Parsons*, 104 Cal. 661, 38 Pac. 447. But it was held in *State v. Sadler* (Nev.), 58 Pac. 284, and in *Tebbe v. Smith*, 108 Cal. 104, 41 Pac. 454, that a ballot with the cross placed opposite

a candidate's name, but outside of the square intended for it, should be counted as a vote for the candidate opposite whose name the mark is placed. And in *Sawin v. Pease* (Wyo.), 42 Pac. 750, it was held that where the name of a candidate nominated by two parties was placed twice on the same ballot under the name of one office, and the voter placed a cross after each name, the ballot should be counted as but one vote. In *Sweeney v. Hjul*, 23 Nev. 409, 48 Pac. 1036, a ballot marked by a cross in the blank spaces for presidential electors under the words "vote for three," and not opposite the name of any candidate, was held to be void.

Section 850. Ticket, How Folded: Every ticket, when used as a ballot, must be folded so as to conceal its contents and to expose the impression of the official stamp on the back.

1899, 5th Ses. p. 47, Sec. 52; 1891, 1st
Ses. p. 77, Sec. 61.

A misdemeanor for officer to unfold
ticket: Penal Code, Sec. 4572.

Section 851. Time of Occupying Booths. Incapacitated Voters: No voter shall be allowed to occupy a voting shelf or compartment already occupied by another, nor to remain within said enclosed space more than ten minutes, nor to occupy a voting shelf or compartment more than five minutes in case all of such shelves or compartments are in use and other voters are waiting to occupy the same. No voter, not an election officer, whose name has been checked on the list of the election officers, shall be allowed to re-enter said enclosed space during said election. It shall be the duty of the judges for the time being to secure the observance of the provisions of this and the two preceding sections: *Provided*, That if any registered elector, who is blind or otherwise disqualified by reason of physical infirmities rendering such voter incapable of personally marking his ballot, desires to vote, then and in that case, any two of the judges not of the same political party may, at the request of such elector, mark and prepare his ballot for him, placing an (X) mark in the proper place and opposite the name of the candidates for whom such elector desires to vote. When the ballot so marked by the judges is properly prepared and folded it shall be given to the elector, who shall deliver it to the proper judge to be deposited in the ballot box, as in other cases. The judges assisting any such physically incapacitated elector in the preparation of his ballot, must not influence or attempt to influence such voter in the selection of candidates to be voted for, nor divulge to any person the name of any candidate for whom such elector voted.

1899, 5th Ses. p. 50, last part of Sec.
69; 1895, 3d Ses. p. 97, amending laws
of 1891, 1st Ses. p. 81, Sec. 78.

Penalty for divulging name of can-
didate voted for: Penal Code, Sec.
4591.

Section 852. Mutilated Tickets: No person shall take or remove any ticket from the polling place before the close of the polls. If an elector inadvertently or by mistake spoils a ticket, he shall return it folded to the distributing clerk, who must, if satisfied of such inadvertence, give him another ticket. The ticket thus returned shall, without examination, be immediately cancelled by writing across the back, or outside of the ticket as folded, the words "spoiled ticket, another issued," and deposit the defaced ticket in a box provided for that purpose. And no one shall be allowed within the guard rails of the polling place, except the election officers duly appointed, together with the number of voters as provided in section 848.

1899, 5th Ses. p. 50, Sec. 70; 1891, 1st Ses. p. 82, Sec. 79.

Section 853. Depositing Tickets in Ballot Box: The judge to whom any ballot may be delivered shall, upon the receipt thereof, pronounce in an audible voice the name of the elector, and if no objection shall be made to him, and the judges are satisfied that he is a legal voter, and is duly registered, and the official stamp is plainly visible on the outside of the folded ballot, shall,

without opening or examining, immediately deposit the ballot in the ballot box, and the clerks of the election shall enter the name of the elector in the poll books.

1899, 5th Ses. p. 51, Sec. 73; 1891, 1st Ses. p. 83, Sec. 82.

Section 854. A Ballot not Stamped Must not be Deposited: No judge of election shall deposit in any ballot box a ballot upon which the "official stamp," as hereinbefore provided does not appear.

1899, 5th Ses. p. 51, first part of Sec. 74; 1891, 1st Ses. p. 83, Sec. 83.

Penalty for violation of section:
Penal Code, Sec. 4592.

Section 855. Restrictions Against Election Officers: No officer, judge or clerk shall communicate, except for some purpose authorized by law, before the polls are closed, any information as to the name or number on the registry list of any elector who has not applied for a ticket, or who has not voted at the polling place; and no officer, judge or clerk, or other persons, whomsoever, shall interfere with, or attempt to interfere with, a voter when marking his ticket.

No officer, judge or clerk, or other person shall, directly or indirectly, attempt to induce any voter to display his ticket after he shall have marked the same, or to make known to any person the name of any candidate for or against whom he may have voted.

1899, 5th Ses. p. 51, Sec. 75; 1891, 1st Ses. p. 83, Sec. 84.

CHALLENGING.

Section 856. All Persons Subject to Challenge: All persons offering to vote at any election are subject to challenge, as provided by the election laws, but registration of any elector's name is prima facie evidence of his right to vote, and no person shall vote unless he is first registered.

1899, 5th Ses. p. 41, first part of Sec. 35; 1891, 1st Ses. p. 71, Sec. 44.

Section 857. Duty of Judges When Challenge Made: In case any person offering to vote is challenged, one of the judges must declare the qualifications of an elector to such person; if the person so challenged then declare himself duly qualified, and the challenge is not withdrawn, one of the judges must then tender him the elector's oath, as provided for in section 814.

1899, 5th Ses. p. 52, Sec. 77; 1891, 1st Ses. p. 84, Sec. 86.

Section 858. Questions by Judges: If the person be challenged as unqualified, on the ground that he is not a citizen, and will not exhibit his papers pertaining to his naturalization, the judges, or one of them, shall put the following questions:

First.—Are you a citizen of the United Staes?

Second.—Are you a native or naturalized citizen?

Third.—Have you become a citizen of the United States by reason of the naturalization of your parents or one of them?

Fourth.—Where were your parents, or one of them, naturalized?

If the person offering to vote claims to be a naturalized citizen of

the United States he shall state under oath, when and in what courts he was naturalized.

1899, 5th Ses. p. 52, Sec. 78; 1891, 1st Ses. p. 84, Sec. 87.

Section 859. Challenge on Ground of Conviction of Felony:

If the challenge is on the ground that the person challenged has been convicted of felony and has not been pardoned, he must not be questioned; but the fact may be proved by the production of an authenticated copy of the record, or by the oral testimony of two witnesses and the non-production of a pardon.

1899, 5th Ses. p. 52, Sec. 79; 1891, 1st Ses. p. 84, Sec. 88.

Section 860. How Residence Determined: The judges of election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable.

First.—That the place shall be held and considered to be the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

Second.—A person shall not be considered or held to have lost his residence who shall leave his home and go into another state, territory or county of this state, for temporary purposes merely, with an intention of returning.

Third.—If a person remove to any other state or to any of the territories, with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in this state.

Fourth.—If a person remove from one county in this state to any other county in the state with the intention of making it his permanent residence, he shall be considered and held to have lost his residence in the county from which he removed.

1899, 5th Ses. p. 52, Sec. 80; 1895, 3d Ses. p. 84, Sec. 89.
Ses. p. 98, amending laws of 1891, 1st See note to Sec. 786.

Section 861. Residence in State or County, how Tested: If the person be challenged as unqualified, on the ground that he has not resided in this state for six months immediately preceding the election, the judges, or one of them, shall put the following questions:

First.—Have you resided in this state for six months immediately preceding this election, and during that time have you retained a home or domicile elsewhere?

Second.—Have you been absent from this state within the six months immediately preceding this election?

Third.—If so, when you left, was it for a temporary purpose, with the design of returning, or did you intend remaining away?

Fourth.—Did you, while absent, look upon and regard this state as your home?

Fifth.—Did you, while absent, vote in any state or territory?

If the person be challenged on the ground that he has not resided in the county thirty days, one of the judges shall question him as to his residence in the county, precinct or ward in a manner similar to

the before-mentioned method of questioning a person as to his residence in this state.

If the person be challenged as unqualified, on the ground that he is not twenty-one years of age, the judges, or one of them, shall put the following questions: Are you twenty-one years of age, to the best of your knowledge and belief? The judges of election, or one of them, shall put all such other questions to the person challenged under the respective heads aforesaid, as may be necessary to test his qualifications as an elector at that election.

1899, 5th Ses. p. 52, Sec. 81; 1891, 1st Ses. p. 85, Sec. 90.

Section 862. Oath when Challenge not Withdrawn:

If the challenge be not withdrawn after the person offering to vote shall have answered the questions put to him as aforesaid, one of the judges shall tender to him the following oath: "You do solemnly swear (or affirm) that you are a citizen of the United States, of the age of twenty-one years, that you have been a resident of this state for six months next immediately preceding this election, and have not retained a home or domicile elsewhere; that you have been for the last thirty days, and now are a resident of this county and that you have not voted at this election."

1899, 5th Ses. p. 53, Sec. 82; 1895, 3d
Ses. p. 98, amending laws of 1891, 1st
Ses. p. 85, Sec. 91.

Refusal to be sworn a misdemeanor:
Penal Code, Sec. 4567.
Perjury: Penal Code, Sec. 4645.

Section 863. Vote Rejected When: If any person shall refuse to take the oath or affirmation so tendered his vote shall be rejected: *Provided*, That after such oath shall have been taken, the judges may nevertheless refuse to permit such person to vote if they shall be satisfied that he is not a legal voter.

1899, 5th Ses. p. 53, Sec. 83; 1891, 1st Ses. p. 86, Sec. 92.

Section 864. "Sworn" Vote: Whenever any person's vote shall be received after having taken the oath or affirmation prescribed in section 862 it shall be the duty of the clerks of the election to write on the poll books, at the end of the person's name, "sworn."

1899, 5th Ses. p. 53, Sec. 84; 1891, 1st Ses. p. 86, Sec. 93.

Section 865. Duty of Judge to Challenge: It shall be the duty of any judge of election to challenge any person offering to vote whom he believes not to be qualified as an elector.

1899, 5th Ses. p. 53, Sec. 85; 1891, 1st Ses. p. 86, Sec. 94.

Section 866. Challenged Person Refused, When: If a person challenged refuses to take the oaths tendered, or refuses to be sworn and to answer the questions touching the matter of naturalization, he must not be allowed to vote.

1899, 5th Ses. p. 53, Sec. 86; 1891, 1st Ses. p. 86, Sec. 95.

POLL LISTS.

Section 867. Form of: The following is the form of poll lists to be kept by the judges and clerks of election;

Poll Lists.

Of the election held in the precinct of, in the county of, on the day of, in the year A. D. one thousand nine hundred and A. B., C. D. and E. F., judges, and G. H., I. J. and K. L., clerks of said election, were respectively sworn (or affirmed), as the law directs, previous to their entering on the duties of their respective offices.

Number and Names of Electors Voting.

No.	Name.	No.	Name.
1.	A. B.	3.	E. F.
2.	C. D.	4.	G. H.

We hereby certify that the number of electors voting at this election amounts to

Attest:

G. H.,)
I. J., } Clerks.
K. L.,)

A. B.,)
C. D., } Judges of Election.
E. F.,)

1899, 5th Ses. p. 50, Sec. 71; 1891, 1st Ses. p. 82, Sec. 80.

CANVASS OF VOTES AND DELIVERY OF RETURNS.

Section 868. Duty of Distributing Clerk when Polls Close: As soon as the polls are finally closed the distributing clerk must deliver to the judges of election the book or books of tickets from which tickets have been taken during the election, and the box containing the defaced, mutilated or returned ballots.

1899, 5th Ses. p. 53, Sec. 87; 1891, 1st Ses. p. 86, Sec. 96.

Section 869. Canvass of Votes must be Public: The judges of election must immediately proceed to canvass the votes given at such election. The canvass must be public, in the presence of bystanders, and must be continued without adjournment until completed and the result thereof declared, except as provided in sections 874 and 876.

1899, 5th Ses. p. 53, Sec. 88; 1891, 1st Ses. p. 86, Sec. 97, exception added by Commission.

Changing or altering ballots, etc.: Penal Code, Sec. 4571.

WHAT ACTS WILL NOT INVALIDATE THE VOTES: Under a statute which provides that the canvass of votes cast at an election must be pub-

lic in the presence of bystanders, the action of the election board in removing from the polling place all but two bystanders, and keeping the doors locked for one-half hour, did not invalidate the votes cast, no fraud being shown.—Atkinson v. Lorbeer, 111 Cal. 419, 44 Pac. 162.

Section 870. Canvass, how Made: The canvass must commence by comparison of the poll lists from the commencement,

and a correction of any mistake that may be found therein, until they are found to agree. The box must then be opened, and the ballots found therein counted by the judges, unopened, and the number of ballots in the box must agree with the number marked on the poll list or registry list as having received a ticket, and this number, together with the number of defaced, mutilated and returned ballots, must agree with the number of stubs or counterfoils in the books from which the tickets have been taken.

Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted: *Provided*, That when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges to count such part.

1899, 5th Ses. p. 53, Sec. 89; 1891, 1st Ses. p. 86, Sec. 98.

See note to Sec. 826.

EFFECT OF MARKS AND BLURS ON THE BALLOTS: Where ballots show an irregular pencil mark clearly made accidentally, they are properly counted.—*Sweeney v. Hjul*, 23 Nev. 409, 48 Pac. 1036. The fact that the cross strokes on a ballot are blurred, or the lesser part of the cross is on the line below does not render the ballot invalid.—*People v. Town of Sausalito*, 106 Cal. 500, 39 Pac. 937. The writing by a voter on his ballot of the party designation of a candidate, after the name, which he has also written in, does not invalidate the ballot.—*Jennings v. Brown*, 114 Cal. 307, 46 Pac. 77, 34 L. R. A. 45. A ballot containing the names of candidates for office who do not belong on it is not invalidated as to candidates for another and different kind of office.—*State v. Sadler* (Nev.), 58 Pac. 284. Words written on ballots after they are cast, and marks and blots made on them do not vitiate in the absence of fraud.—*State v. Sadler* (Nev.), 58 Pac. 284; but in the latter case the following defects were held to nullify a vote: Where a character not resembling a cross is made opposite the name voted for; or "T" is placed after

the cross; or erasures have been made, destroying the texture of the paper; or crosses are made in the improper place; or words have been erased or written by the elector or an unauthorized person upon the ballot before it was cast; or the official initials are deliberately scratched out; or the cross is placed after the designation of an office, instead of the officer; or crosses are made opposite a blank space left to fill in the name of a candidate nominated to fill a vacancy, after making a cross for another candidate for the same office; or two crosses are made after the name of the candidate voted for; or a proper cross is inserted within "O"; or equation marks are made between the names of the candidates and the party designation; or the letters or proper words on a ballot are defaced or marked; or ink or blue or purple pencil crosses are made; or where "O" in the word "Official" has a cross made within it; or where ballots are marked with lines. Imperfect success in marking a cross in the proper place to indicate a choice of candidates, where there was a clear intention to conform to the statute, and not to distinguish the ballot, will not require its rejection.—*Parker v. Orr*, 158 Ill. 609, 30 L. R. A. 227, 41 N. E. 1002.

Section 871. Manner of Counting, and Entering Results: The ballots and poll lists agreeing, the board must then proceed to count and ascertain the number of votes cast, and the clerks must set down in their poll books the name of every person voted for, and then at full length the office for which such person received such votes, and the number he did receive, the number being expressed at full length; such entry to be made, as nearly as circumstances will permit, in the following form, to-wit:

At an election held at the house of (A. B.) in the town (district or precinct) of, in the county of, and in the State of Idaho, on the day of, A. D., the following named persons received the number of votes annexed to their respective

names for the following described offices, to-wit: (A. B.) has votes for member of congress; (I. J.) has votes for member of state senate; (K. L.) has votes for member of house of representatives, (and in like manner for any other person voted for). Certified by us.

Attest:

S. T.,	} Clerks of Election.	M. N.,	} Judges of Election.
U. V.,		O. P.,	
W. Y.,		Q. R.,	

1899, 5th Ses. p. 54, Sec. 90; 1891, 1st Ses. p. 87, Sec. 99.

Section 872. Returns, how Made: After the canvass of the votes the judges of election must enclose and seal one of the poll books the register of the qualified electors, also all stubs and unused ticket books, and defaced or mutilated ballots, and the election stamp under cover, directed to the clerk of the board of county commissioners of the county in which such election was held. And the package thus sealed must be delivered direct to the said clerk personally, or transmitted by special messenger without expense to the county, or deposited in the nearest postoffice by one of the judges, to be chosen by lot; and the postage thereon and the fees for registering the same must be fully prepaid. And said package must be duly registered and receipt therefor taken; and the other poll book, together with the ballots, must be, by said judges, placed in the ballot box, and by them sealed up and then deposited with one of said judges, to be decided by lot, if they can not otherwise agree; and the said poll book and ballots must be kept with the seal unbroken for at least eight months; unless the same is required as evidence in a court of law in any case arising under the election laws of this state, and then only when the judge having said ballot box in charge is served with a subpoena requiring him to produce the same in court as evidence in any such before-mentioned case, when the same may be opened under the direction of the court.

1901, 6th Ses. p. 292.

Forging returns: Penal Code, Secs. 4573, 4574.

CANVASS OF VOTES IN POPULOUS DISTRICTS.

Section 873. Two Sets of Officers: In every precinct where, at the general election then next preceding, there were more than one hundred votes cast for the office of governor, the board of county commissioners of the county wherein the same is situated, shall at the time provided for the appointment of election officers, appoint two sets of such officers and in making such appointment shall designate which set shall act under the provisions of this subdivision. And such board shall also make suitable provision for the carrying of this sub-division into effect.

1901, 6th Ses. p. 292.

Section 874. Counting While Election Proceeds: When, at any election in any precinct to which this sub-division ap-

plies, fifty votes shall have been cast, another ballot box for receiving ballots shall be used and the first ballot box shall be closed and delivered to such judges designated as provided in section 873, who shall proceed to the place provided for them and shall at once count the votes in said ballot box; and when counted, they shall return said emptied ballot box to the judges receiving the ballots and otherwise conducting the election, and the latter shall then deliver to the judges who were designated to count the ballots, the second ballot box and such judges shall immediately count the ballots therein contained as above provided; and they shall continue so to count the ballots and so to exchange the ballot boxes till the close of the polls, after which time both sets of judges shall, acting separately, count the remaining ballots dividing the same between them.

1899, 5th Ses. p. 372, Sec. 2.

Section 875. All Judges to Join in Returns: All the judges of election shall join in making the return to the board of county commissioners.

1899, 5th Ses. p. 372, Sec. 3.

Section 876. Two Sets Ballot Boxes. Secluded Rooms: The board of county commissioners of the several counties must provide two sets of ballot boxes for all precincts where this sub-division applies, and shall provide a suitable and convenient place or room immediately adjoining the place where the election is being held, for the use of the election officers counting the ballots during the day. Such counting may be witnessed by one representative from each of the political parties represented upon the official ballot, which representative shall be designated in writing by the chairman and secretary of the respective county central committees, or in case of a city election by the city central committee, and who shall each take and subscribe an oath before one of the judges of election that he will not, prior to the closing of the polls, communicate in any manner, directly or indirectly, by word or sign, the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto; and such representatives and the judges counting the ballots shall be confined to the room or place provided and shall not leave the same during the count except in case of necessity, and then in the custody of the constable of election; nor shall any such election officers or party representatives in any manner, directly or indirectly, by word or sign, disclose or communicate the progress of the counting, nor the result so far as ascertained, nor any information whatsoever in relation thereto, until the polls are closed.

1901, 6th Ses. p. 16.

Penalty for ascertaining or attempt-

ing to ascertain result of the count:

Penal Code, Sec. 4590.

Section 877. Applies to General Elections Only: This sub-division shall only apply to general elections.

1899, 5th Ses. p. 373, Sec. 5.

Section 878. General Election Laws Applicable: Except as herein modified, the general election laws are in every way

applicable to the precincts acting under the provisions hereof and to all the officers of election.

1899, 5th Ses. p. 373, Sec. 6.

CHAPTER XXVI.

CANVASSING BOARDS.

Section.	COUNTY BOARD.	Section.	STATE BOARD.
879.	Board of county commissioners, duties, certificates.	884.	Statement by board. Persons elected.
880.	Duties of county auditor.	885.	Determination of tie vote.
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881.	What votes to be canvassed by.	887.	Errors in names and returns, effect.
882.	Messenger for abstracts not received.	888.	Correcting returns.
883.	When board meets. Adjournments.		

COUNTY BOARDS.

Section 879. Board of County Commissioners; Duties; Certificates: The board of county commissioners, the auditor acting as clerk, in the several counties, must act as a board of canvassers of elections, and must, on the tenth day after any general or special election, or sooner, if all the returns be received, and any two of the commissioners are present, proceed publicly, at their office, to open the returns and canvass the votes of said election, and make up abstracts thereof; and it is their duty to canvass and make up abstracts of all returns that are intelligible on their face and which are sufficiently authenticated to show what returns they are; and if any returns are rejected on account of informality, ambiguity or uncertainty—and none must be rejected for other causes—then it is the duty of the board to deliver the returns so rejected to the sheriff of the county, who must proceed at once to summons and call together the board of judges of election of the precinct from which said returns were received, and inform them that such return has been rejected; and it is the duty of such board of judges to meet publicly, at the place where the election was held in their precinct, immediately after receiving such notice, and at once proceed to put said return in due form and certify to the same; and for the purpose of so doing they may have the ballot box brought in and opened in their presence, the contents thereof inspected, and when said returns have been duly corrected they must be delivered into the hands of the sheriff, and the board of canvassers may adjourn, to await the correction of said returns, for the period of not more than five days at one time, nor more than ten days in all. When said canvass is completed, the abstract must be made up and signed by the board. The abstracts shall be made out in the following manner:

The abstract of votes for electors for president and vice-president of the United States shall be on one sheet, and the abstract of votes for representative in congress shall be on another sheet, and the

abstract of votes for officers of the executive department shall be on another sheet, and the abstract of votes for senators shall be on another sheet, and the abstract of votes for representatives shall be on another sheet, and the abstract of votes for judges of the supreme court shall be on another sheet, and the abstract of votes for judges of the district court shall be on another sheet, and the abstract of votes for county and precinct officers shall be on another sheet; and it shall be the duty of the auditor of the county immediately to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers, respectively, and cause such certificate to be delivered to the person entitled to it. If any two or more persons have an equal number of votes for the same county or precinct office, and a higher number than any other person, the county commissioners shall immediately determine by lot which of the two candidates shall be elected.

1899, 5th Ses. p. 54, Sec. 92; 1891, 1st Ses. p. 88, Sec. 101.

NO VOTES CAN BE REJECTED:

The board of canvassers having received and accepted the returns from every voting precinct, cannot reject or refuse to abstract all of the votes contained therein for the officers to be elected respectively. Neither can the auditor reject or refuse to count any votes whatever, but all votes cast in the county, as appears by said abstract must be counted.—Cunningham v. George, 2 Idaho, 1196, 31 Pac. 809.

BOARD OF CANVASERS CANNOT DECLARE ELECTION: The board of canvassers is not authorized to

declare any person elected to an office. Having canvassed the returns they are required to make out abstracts of votes for each of the officers separately and deliver them to the auditor of the county. The law provides that it shall be the duty of the auditor of the county immediately to make out a certificate of election to each of the persons having the highest number of votes for the county and precinct offices respectively. In the performance of this duty he is not under the direction or control of the board of canvassers in any sense whatever.—Cunningham v. George, 2 Idaho, 1196, 31 Pac. 809.

Section 880. Duties of County Auditor: The auditor of the county, immediately after making out abstracts of votes given in his county, shall make a copy of such abstract and deliver or transmit the same in a registered package by mail to the office of the secretary of state; the original abstracts he shall file and record in a book in his office to be kept for that purpose. He shall also certify to the abstracts and copies and affix thereto the county seal, and the said auditor shall indorse on the back of each abstract: "Certified copy of the abstract of votes cast for governor, etc., members of the legislature, etc., (as the case may be), cast at the regular election in county, 19...."

1899, 5th Ses. p. 55, Sec. 93; 1891, 1st Ses. p. 89, Sec. 102.

STATE BOARD

Section 881. What Votes to be Canvassed by: The board of state canvassers shall canvass the abstracts of votes cast in the different counties of the state for electors of president and vice-president of the United States, for representative in congress, for judges of the supreme court and district courts, and for senators and representatives, and all state officers.

1899, 5th Ses. p. 55, Sec. 94, rewritten
Commission; 1891, 1st Ses. p. 89,
Sec. 103,

Board of canvassers, how constituted: Sec. 279.

Section 882. Messenger for Abstracts not Received by Secretary: If from any county no such abstract of votes shall have been received by the secretary of state within twenty days next after election, he shall dispatch a special messenger to obtain a copy of the same from the county auditor of such county, and such county auditor shall immediately, on demand of such messenger, make out and deliver to him the copy required, which copy of the abstract of votes the messenger shall deliver to the secretary of state without delay. The said messenger shall receive as compensation for his services three dollars per day and fifteen cents per each mile traveled in going to and returning from the county seat of said county, by the usual route, to be paid by the county.

1899, 5th Ses. p. 55, Sec. 95; 1891, 1st Ses. p. 89, Sec. 104.

Section 883. When Board Meets. Adjournments: For the purpose of canvassing the results of elections, the state board of canvassers shall meet at the office of the secretary of state, at ten o'clock of the forenoon of the twentieth day after any election for any of the officers mentioned in section 881, if it be not on Sunday; if it be on Sunday, then they shall meet on the twenty-first day, when they shall, if the returns from all the counties of the state be in the possession of the secretary of state, proceed to canvass the votes; if the returns are not all in, they shall adjourn from time to time, as they deem proper, to await the receipt of all the returns: *Provided, however,* That on the second Wednesday of December next after the election, they shall canvass the votes, whether all the returns be received or not.

1899, 5th Ses. p. 56, Sec. 96; 1891, 1st Ses. p. 90, Sec. 105.

Section 884. Statement by Board. Persons Elected: The state board of canvassers, when met in accordance with law, and a quorum (three) being present, shall proceed to examine and make statement of the whole number of votes given at any such election for all the officers mentioned in section 881 that shall have been voted for in said election, which statement will show the names of the persons to whom such votes shall have been given for either of the said offices, and the whole number given to each, distinguishing the several districts and counties in which they were given; they shall certify such statement to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been, by the greatest number of votes, duly elected to such offices, or either of them, and shall indorse and subscribe on such statements a certificate of their determination, and deliver them to the secretary of state.

1899, 5th Ses. p. 56, Sec. 97; 1891, 1st Ses. p. 90, Sec. 106.

STATE CANVASSERS: The power of the state canvassing board is confined solely to ascertaining the result of the figures in the returns, and its duty is to declare such result according to law. It cannot inquire into the eligibility of candidates, or declare the mi-

nority candidate elected, because of his competitor's ineligibility, nor can it consider or act upon any extraneous papers or information beyond that contained in the returns themselves.—*People v. State Board of Canvassers*, 129 N. Y. 360, 29 N. E. 345, 14 L. R. A. 646. After a state board of canvassers have canvassed all the returns from all the

counties of the state and declared the result and ordered certificates, as prescribed by statute, and then, having completed its labors adjourned without day, it is officially dead, and the courts have no power to compel it to reassemble or recount any of the returns.—*Rosenthal v. State Board of Canvassers*, 50 Kan. 129, 19 L. R. A. 157, 32 Pac. 129.

DECLARATION OF RESULT, EFFECT: The official announcement, of the result, of an election, by the proper canvassing board is of binding force as to the fact of an actual election, until reversed or set aside by a court of competent jurisdiction.—*State ex rel. Lamar v. Johnson*, 35 Fla. 2, 31 L. R. A. 357, 16 So. 786.

Section 885. Determination of Tie Vote. If any two or more persons have an equal and the highest number of votes for member of either house of the legislature, for judge of the supreme or district courts, or for any state office, other than those mentioned in section I of article four of the constitution, the state canvassers shall proceed to determine, by lot, which of the candidates shall be declared elected. Reasonable notice shall be given to each candidate of the time when such election will be so determined.

1899, 5th Ses. p. 56, Sec. 98; 1895, 3d Ses. p. 91, amending laws of 1891, 1st Ses. p. 90, Sec. 107.

TIE VOTE: A statute providing that a tie vote may be determined by

lot does not violate a constitutional provision that all elections shall be by ballot.—*Johnston v. State*, 128 Ind. 16, 12 L. R. A. 235, 27 N. E. 422.

Section 886. Certificates of Election: The secretary of state shall record in his office, in a book to be kept by him for that purpose, each certified statement and determination as made by the board of state canvassers, and shall, without delay, make out and transmit to each of the persons thereby declared to be elected, a certificate of his election, certified by him under his seal of office.

1899, 5th Ses. p. 56, Sec. 99; 1891, 1st Ses. p. 91, Sec. 108.

PROVISIONS APPLICABLE TO BOTH.

Section 887. Errors in Names and Returns, Effect: Whenever the judges of election in any precinct or ward discover in the canvassing of votes that the name of any candidate voted for be misspelled, or the initial letters of his Christian name or names be transposed or omitted in part, or altogether, on the ballot, the vote or votes for such candidate shall be counted for him, if the intention of the elector to vote for him be apparent; and whenever the board of county canvassers, or of state canvassers, shall find the returns from any precinct, ward, county or district (as the case may be), do not strictly conform to the requirements of law, in the making, certifying and returning the same, the votes polled in such precinct, ward, county or district shall, nevertheless, be canvassed and counted, if such returns shall be sufficiently explicit to enable such boards, or any person or persons authorized to canvass votes and returns, to determine therefrom how many votes were polled for the several persons who were candidates and voted for at the election of which the votes are being canvassed.

1899, 5th Ses. p. 57, Sec. 103; 1891, 1st Ses. p. 93, Sec. 116.

CANNOT GO BEHIND RETURNS: The canvassing board cannot go behind

determine the result of an election.—*State v. Trimbell*, 12 Wash. 440, 41 Pac. 183.

the returns of the election officers to

Section 888. Correcting Returns: If upon proceeding to canvass the votes it shall clearly appear to the canvassers that in any statement produced to them certain matters are omitted in such statement which should have been inserted, or that any mistakes which are clerical, merely, exist, they shall cause the said statement to be sent by one of their number (whom they shall depute for that purpose) to the precinct or ward judges, or to the county board of canvassers (as the case may be) from whom they were received, to have the same corrected; and the judges of election or county auditor, (as the case may be), when so demanded, shall make such correction as the facts of the case require, but shall not change or alter any decisions before made by them, but shall only cause their canvass to be correctly stated: and the canvassing board may adjourn from day to day for the purpose of obtaining and receiving such statement: *Provided, always,* That they shall not delay counting, past the day provided by law for the completion of the canvass.

1899, 5th Ses. p. 57, Sec. 104; 1891, 1st Ses. p. 93, Sec. 117.

CHAPTER XXVII.

PRESIDENTIAL ELECTORS.

Section.

889. Certificates to electors.

890. Electors to meet at state capital.

891. Notice to governor. Filling vacancies.

Section.

892. Governor to decide when tie for vacancies.

893. Persons chosen to fill vacancies.

894. Compensation and mileage of electors.

Section 889. Certificates to Electors: The secretary of state shall prepare lists of the names of the electors of president and vice-president of the United States, elected at any election, procure thereto the signature of the governor, affix the seal of the state to the same, and deliver one of such certificates thus signed to each of said electors on or before the second Wednesday in December next after such election.

1899, 5th Ses. p. 57, Sec. 101; 1891, 1st Ses. p. 91, Sec. 110.

Section 890. Electors to Meet at State Capital: The electors chosen to elect a president and vice-president of the United States, shall at 12 o'clock on the day which is or may be directed by the congress of the United States, meet at the seat of government of this state, and then and there perform the duties enjoined upon them by the constitution and laws of the United States.

1899, 5th Ses. p. 66, Sec. 1; 1891, 1st Ses. p. 91, Sec. 111.

Section 891. Notice to Governor, Filling Vacancies: Each elector of president and vice-president of the United States shall, before the hour of twelve o'clock on the day next preceding the day fixed by the law of congress to elect a president and vice-president, give notice to the governor that he is at the seat of government and ready at the proper time to perform the duties of an elector: and the governor shall forthwith deliver to the electors pres-

ent a certificate of all the names of the electors; and if any elector named therein fails to appear before nine o'clock on the morning of the day of election of president and vice-president as aforesaid, the electors then present shall immediately proceed to elect, by ballot, in the presence of the governor, persons to fill such vacancies.

1899, 5th Ses. p. 66, Sec. 2; 1891, 1st Ses. p. 91, Sec. 112.

Section 892. Governor to Decide, when Tie for Vacancies: If more than the number of persons required to fill the vacancies, as aforesaid, have the highest and an equal number of votes, then the governor, in the presence of the electors attending, shall decide by lot which of said persons shall be elected; otherwise, they, to the number required, having the greatest number of votes, shall be considered elected to fill such vacancies.

1899, 5th Ses. p. 66, Sec. 3; 1891, 1st Ses. p. 92, Sec. 113.

Section 893. Persons Chosen to Fill Vacancies: Immediately after such choice is made the names of the persons so chosen shall forthwith be certified to the governor by the electors making such choice; and the governor shall cause immediate notice to be given in writing to the electors chosen to fill such vacancies; and the said persons so chosen shall be electors, and shall meet the other electors at the same time and place, and then and there discharge all and singular the duties enjoined on them as electors aforesaid by the constitution and laws of the United States and of this state.

1899, 5th Ses. p. 66, Sec. 4; 1891, 1st Ses. p. 92, Sec. 114.

Section 894. Compensation and Mileage of Electors: Every elector of this state for the election of president and vice-president of the United States, hereafter elected, who shall attend and give his vote for those offices at the time and place appointed by law, shall be entitled to receive the sum of five dollars per day for each days' attendance at such election, and fifteen cents per mile for each mile he shall travel in going to and returning from the place where the electors shall meet, by the most usual traveled route, to be paid out of the general fund, and the state auditor shall draw his warrant for the same, when audited and allowed as provided by law.

1899, 5th Ses. p. 67, Sec. 5; 1891, 1st Ses. p. 92, first part of Sec. 115.

CHAPTER XXVIII.

REMOVAL OF COUNTY SEATS AND ALTERATION OF COUNTY LINES.

Section.

- REMOVAL OF COUNTY SEATS.**
 895. Removal elections at date of general elections.
 896. Notice and petition for removal.
 897. Signatures of petitioners. Who may petition.
 898. Petitions open to inspection.

Section.

899. Voter may contest right of any person to sign.
 900. Court proceedings.
 901. Actions have precedence. Decision final.
 902. Form of ballot. Who may vote.
 903. Challenges.

Section.

904. Canvassing returns.

905. A two-thirds vote necessary.

ALTERATION OF COUNTY LINES.

906. Who may vote. Majority necessary.

Section.

907. County seat rules govern.

908. Printing and distribution of ballots.

REMOVAL OF COUNTY SEATS.

Section 895. Removal Elections at Date of General Election: All elections for the removal of county seats shall be held at the same time and place at which general elections are held.

1899, 5th Ses. p. 57, Sec. 105; 1891, 1st Ses. p. 93, Sec. 118.

Section 896. Notice and Petition for Removal: Public notice shall be given of the intention to circulate a petition praying for the removal of the county seat of any county from its then present location to some other point within the said county, and in said petition designated, at least ten days before the same is circulated, by publication in some newspaper, if there be one, printed in the county, and by posting three printed notices in three public places at the county seat, and a like number at the place to which the county seat is proposed to be removed, in which notices the intent of said petition shall be set forth; and all signers to such petition or petitions shall be void and stricken from such petition if procured six months before the first day of the term of court at which the application is to be made; and whenever such petition or petitions, addressed to the district court of such county, and stating the time when such election shall be held, shall be signed by a number of legal voters of said county, equal in number to a majority of all votes cast at the last general election therein, and shall be filed in the office of the clerk of the district court of said county, not less than twenty nor more than forty days before the first day of the term of said court next preceding the next general election, unless said term commences after the first day of October, then, in such case, the next preceding term. Such petition shall be deemed a proposal to remove the county seat of such county, and the point designated in said petition shall be deemed and taken as fixed by said petition, in pursuance of law, whenever the court shall order an election to such point, as hereinafter provided, as the point to which it is proposed to remove the county seat of such county.

1899, 5th Ses. p. 57, Sec. 106; 1891, 1st Ses. p. 93, Sec. 119.

Constitutional provisions: Const. Art. XVIII, Sec. 2.

Contesting county seat elections: Code Civil Proc. Sec. 3796 et seq.

Wilson v. Bartlett (Idaho), 62 Pac. 416.

SUPPLEMENTAL PETITION UNAUTHORIZED: The petition, when presented, must contain the names of all the persons who desire to sign the same as petitioners. A supplemental petition is unauthorized.—Ayres v. Moan, 34 Neb. 210, 15 L. R. A. 501, 51 N. W. 830.

Section 897. Signatures of Petitioners. Who may Petition: Each petitioner signing such petition shall write, or cause to be written, opposite to his name on said petition, the name of the city and ward in which he then resides, if he resides in a city; or, if he does not reside in a city, then the name of the pre-

cinct in which he resides at the time of signing such petition; and no person shall sign such petition unless he shall be, at the time, a legal voter at general elections.

1899, 5th Ses. p. 58, Sec. 107; 1891, 1st Ses. p. 95, Sec. 120.

PURPOSE OF PROVISIONS: The evident purpose of the provisions of this section is to identify every petitioner, so as to protect the bona fide

residents of the county. And the omission of any of these particulars will be sufficient to cause his rejection as a petitioner.—Ayres v. Moan, 34 Neb. 210, 15 L. R. A. 501, 51 N. W. 830.

Section 898. Petition Open to Inspection: Said petition or petitions shall, after they are filed in the office of the clerk of the district court of the county, be open to the inspection of any and all citizens of the county, but shall not be removed therefrom.

1899, 5th Ses. p. 58, Sec. 108; 1891, 1st Ses. p. 94, Sec. 121.

Section 899. Voter may Contest Right of any Person to Sign: Any citizen and legal voter at general elections in said county may contest the right of any person whose name is subscribed to said petition, to sign such petition. And shall have the right to contest said petition as to any names subscribed thereto that he shall have good reason to believe are fictitious: *Provided*, He shall, ten days before the first day of the term of said court, file in the office of the clerk of the district court of such county a list of the names of the persons whose right to sign said petition he is desirous of contesting, together with his affidavit indorsed thereon, that he has good reason to believe, and does verily believe, that such persons named in said list are not legal voters of such county and had no right in law to sign such petition; and shall also file in the office of said clerk, ten days before said term of said court, a list of such names as he has reason to believe are fictitious, together with his affidavit, that he has good reason to believe, and does verily believe, that such names are fictitious; and such persons shall have the right to contest such petitions only as to the names included in said lists.

1899, 5th Ses. p. 58, Sec. 109; 1891, 1st Ses. p. 94, Sec. 122.

CANNOT CONTEST AFTER ELECTION: After a county seat election has been ordered and held, and a sufficient vote is cast in favor of some one place to work a relocation of the county seat, the question whether the petition pre-

sented praying that such election be held was signed by a sufficient number of voters was not open to judicial investigation.—State ex rel. Little v. Langlie, 5 N. Dak. 594, 32 L. R. A. 723, 67 N. W. 958; Contra, State ex rel. Anthony v. Barton (Kan.), 51 Pac. 218.

Section 900. Court Proceedings: It shall be the duty of said court, on the first day of, and during said term of court, to hear all evidence for and against said petition or petitions as to the lists of names filed in said court. And to strike from such petition or petitions all names proven by competent evidence to be fictitious, and the names of persons having no legal right to sign the same. And in case there shall be no contest, or if the court finds, after striking from said petition or petitions all names proven to be fictitious, and all names not legally signed thereto, that it still contains the number of names of legal voters required by this chapter, the court shall order said election according to the prayer of said petition. In

case of a contest to said petition or petitions, it shall be the duty of the clerk of said court, on request of the persons contesting any petition under the provisions of this chapter, to issue subpoenas for such witnesses as said persons shall name; and it shall be the duty of said clerk, on request of any legal voter of the county for the purpose of sustaining any petition, in like manner to issue subpoenas for such witnesses as he shall name. Said subpoenas to be made returnable to the term of court at which such contest will be made.

1899, 5th Ses. p. 58, Sec. 110; 1891, 1st Ses. p. 95, Sec. 123.

Section 901. Actions have Precedence. Decision Final: All cases of contest arising upon said petitions or affidavits shall have precedence over all other cases at said term of said court, and shall be heard and determined at said term, and the decision of the court shall be final.

1899, 5th Ses. p. 59, Sec. 111; 1891, 1st Ses. p. 95, Sec. 124.

Section 902. Form of Ballot. Who may Vote: The voting for the removal of any county seat shall be by ballot, and each ballot shall have printed or written thereon the words stated in section 908. Such ballot shall be smaller than the general election ballots, and shall be officially stamped, and there shall be printed or written thereon the words "county seat ballot," and any elector who is registered, and who, in addition to being qualified to vote for county officers, has resided in the county six months and in the precinct ninety days, shall be permitted to vote for or against the removal of the county seat, by handing to one of the judges of election a county seat ballot, at the same time announcing that he is entitled to vote on the question of the removal of the county seat. And if the judges of election are of the opinion that the said elector is entitled to vote on the question of the removal of the county seat, his ballot shall then be deposited in the ballot box, and the clerks of election shall write opposite his name in brackets the words ("county seat") or [county division], as the case may be.

1899, 5th Ses. p. 59, Sec. 112; 1891, 1st Ses. p. 96, Sec. 125.

Section 903. Challenges: Any person who offers to vote on the question of the removal of the county seat, may be challenged by any person and for any of the reasons allowed for other challenges, and the rules provided for other challenges shall apply to such challenges.

1899, 5th Ses. p. 59, Sec. 113; 1891, 1st Ses. p. 96, Sec. 126.

Section 904. Canvassing Returns: The returns for county seat elections shall be canvassed by the same officers and in the same manner as the returns for county and precinct officers are canvassed, and the result of the vote for the removal of the county seat shall be officially declared by the county board of canvassers in the following manner:

They shall record the total votes cast in each ward, or precinct, both for and against the proposed removal upon the book provided for recording the results of the general election. This record shall

be made upon a separate page, or pages, of said book, and after the record is complete and the total result known, they shall make a complete copy of such record, certified to by each member of the board. They shall deposit this certificate with the county auditor, who shall, without delay, file the same with the clerk of the district court which authorized the election, and the auditor shall also cause a copy of the certificate to be printed in some newspaper of general circulation in the county.

1899, 5th Ses. p. 59, Sec. 114; 1891, 1st Ses. p. 96, Sec. 127.

Contesting county seat elections: Code Civil Proc. Sec. 3796 et seq.

REMOVAL OF COUNTY SEAT, INJUNCTION TO PROHIBIT: Citizens, who are residents, electors, and taxpayers of a county may bring suit for injunction to prohibit the removal of the county records from a place alleged to be the county seat to a place claiming to be legally selected as the county seat of a county, and to test the legality of such selection, where there is no speedy and adequate remedy at law.—*Doan v. Board of County Commissioners of Logan County*, 2 Idaho, 781, 26 Pac. 167. In the same case, the court held that the election held on October 1st, 1890, was a general election for that year and that the county commissioners of Logan county were authorized to submit the question of the

permanent location of the county seat for said county to the voters at said election. Injunction will lie at instance of county treasurer.—*Rickey v. Williams*, 8 Wash. 479, 36 Pac. 480.

GIFT TO PUBLIC: A gift or donation to the public as a consideration for the location of public buildings at a certain place, or for the making of a public improvement, is not bribery or contrary to public policy and the donation to secure the location of a county seat has been upheld in the following cases: *Lucas County Com'rs v. Hunt*, 5 Ohio St. 488, 67 Am. Dec. 303; *Harris v. Shaw*, 13 Ill. 456; *Dishon v. Smith*, 10 Iowa 212; *State v. Elting*, 29 Kan. 397; *Beham v. Ohio*, 75 Tex. 87, 12 S. W. 996; *Hawes v. Miller*, 56 Iowa, 395, 9 N. W. 307. The contrary opinion is held in *Ayres v. Moan*, 34 Neb. 210, 15 L. R. A. 501, 51 N. W. 830.

ELECTION, QUALIFICATION AND RESIDENCE.

Section 905. A Two-Thirds Vote Necessary: When the attempt has been made to remove the county seat of any county, as in this chapter provided, and the county board of canvassers have found and declared that two-thirds of the voters of the county who have voted for or against such removal have voted in favor of such removal, then said county seat of said county is thereby removed to the point named in the petition.

1899, 5th Ses. p. 59, Sec. 115; 1891, 1st Ses. p. 97, Sec. 128.

ALTERATION OF COUNTY LINES.

Section 906. Who May Vote. Majority Necessary: Whenever the legislature has enacted that a part of any county is stricken off from any county, and annexed to an adjoining county, the provisions of the constitution being complied with, the qualified electors who have resided ninety days next preceding the first general election after the passage of said act within the boundary lines of the territory stricken off and annexed, shall be permitted to vote at said general election, for or against said annexation. And if a majority of said electors voting at said election vote in favor of annexation, said territory is then stricken off and annexed: *Provided*, That all the requirements of the constitution have been complied with.

1899, 5th Ses. p. 60, Sec. 116; 1891, 1st Ses. p. 97, Sec. 129.

Constitutional requirements: Const. Art. XVIII, Sec. 3.

Section 907. County Seat Rules Govern: The rules and regulations for voting at county seat elections, as provided in this chapter, so far as they apply to ballots—voting, challenging and canvassing the returns—and declaring the result, shall apply to elections for the striking off of any part of any county and annexing the same to any adjoining county.

1899, 5th Ses. p. 60, Sec. 117; 1891, 1st Ses. p. 97, Sec. 130.

GENERAL PROVISIONS.

Section 908. Printing and Distribution of Ballots: It shall be the duty of the auditor of the county wherein it is proposed to hold an election for the removal of the county seat, or changing county lines, to cause to be printed separate ballots at the same time and in the same manner as ballots for the general election are printed.

Such separate ballots shall be three inches square, or as near this size as practicable, and on one side there shall be printed the following words:

For removal of the county) No.
seat to) Yes.
For changing county lines) No.
) Yes.

(as the case may be).

And the auditor shall at the same time send an equal number of these special ballots, with the ballots furnished for the general election, to each voting precinct of the county.

1899, 5th Ses. p. 60, Sec. 118; 1891, 1st Ses. p. 97, Sec. 131.

CHAPTER XXIX.

VACANCIES IN OFFICE.

Section.

- 909. When vacancy occurs.
- 910. Resignations, how made.
- 911. Vacancies in state offices, etc., how filled.
- 912. Vacancies generally, how filled.
- 913. Appointment on petition.
- 914. Term of office.
- 915. Appointments in writing. Continue how long.
- 916. Possession of office when vacancy occurs.

Section.

- 917. When vacancies filled by election.
- 918. Commissioners to be appointed from proper district.
- 919. Vacancy in congress filled by election.
- 920. Vacancy in legislature filled by election.
- 921. Term of office by appointment and by election.
- 922. Notice of removal of officer.

Section 909. When Vacancy Occurs: Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, as follows:

First.—The resignation of the incumbent.

Second.—His death.

Third.—His removal from office.

Fourth.—The decision of a competent tribunal declaring his office vacant.

Fifth.—His ceasing to be a resident of the state, district or county, in which the duties of his office are to be exercised, or for which he may have been elected.

Sixth.—A failure to elect at the proper election, there being no incumbent to continue in office until his successor is elected and qualified, nor other provisions relating thereto.

Seventh.—A forfeiture of office as provided by any law of the state.

Eighth.—Conviction of any infamous crime, or for any public offense involving the violation of his oath of office.

Ninth.—The acceptance of a commission to any military office, either in the militia of this state, or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the state for a period not less than sixty days.

1899, 5th Ses. p. 67, Sec. 1; 1891, 1st Ses. p. 105, Sec. 169.

VACANCY, WHAT CONSTITUTES: If a person elected to a county office is not qualified to hold and enter into the same at the time fixed by law therefor, the office is vacant and may be filled by appointment.—*People v. Curtis*, 1 Idaho, 753. When one elected in November to succeed defendant as a county officer, died the next December after he had qualified, there was a vacancy in the office after the time fixed by law for the commencement of the term and not before.—*People v. Ward*, 107 Cal. 236, 40 Pac. 538; *People v. Boughton*, 5 Colo. 487. The refusal or neglect of a person duly elected to an office, to file his official oath or bond within the time prescribed by law, creates a vacancy as soon as the term for which he is declared elected commences, which may be filled by the proper appointing power.—*People v. Taylor*, 57 Cal. 620; *State ex rel. Burge v. Lansing*, 46 Neb. 514, 35 L. R. A. 124,

64 N. W. 1104. On this latter subject, the supreme court of Washington in *State ex rel. Lysons v. Ruff*, 4 Wash. 234, 16 L. R. A. 140, 29 Pac. 999, says: "The failure to take the oath of office within the time specified by law does not ipso facto create a vacancy which will prevent the officer from qualifying thereafter if it is done before any steps are taken to declare the vacancy, although the statute declares that the office shall be vacant upon refusal or neglect to take the office within the time prescribed."

The acceptance of one office vacates another office previously held by the person accepting, where the offices are incompatible.—*Attorney General, Moreland v. Detroit*, 112 Mich. 145, 37 L. R. A. 211, 70 N. W. 450, and the holder cannot be reinstated in the former by subsequently resigning the latter.—*State ex rel. Walker v. Bus*, 135 Mo. 325, 33 L. R. A. 616, 36 S. W. 636; *Bishop v. State*, 149 Ind. 223, 39 L. R. A. 278, 48 N. E. 1038.

Section 910. Resignations, how Made: Resignations of civil offices may be made as follows:

First.—By the governor to the legislature, if in session; if not, to the secretary of state.

Second.—By senators and representatives in congress, and by all officers elected by the qualified voters of the state, and by judges of the supreme court and district court, and regents of the university, to the governor.

Third.—By members of the senate and house of representatives, to the presiding officers of their respective bodies, if in session, who shall immediately transmit information of the same to the governor. If such bodies are not in session, to the governor.

Fourth.—By all county and precinct officers, to the county board, and by members of the county board, to the county auditor.

Fifth.—By all township officers, to the township clerk; and by the township clerk to the town board.

Sixth.—By all officers holding appointment, to the officer or body by whom they were appointed. Such resignation shall not take effect until accepted by the board or officer to whom the same is made.

1899, 5th Ses. p. 68, Sec. 2; 1891, 1st Ses. p. 105, Sec. 170.

WHEN RESIGNATION MAY BE MADE: A person who has been elected to an office cannot resign the same until he has given the bond required

by statute, and taken the oath, and entered upon the discharge of the duties of the office to which he has been elected.—*J. E. Miller v. The Board of Supervisors of Sacramento Co.* 25 Cal. 94.

Section 911. Vacancies in State Offices, Etc., how Filled:

All vacancies in any state office, and in the supreme and district courts, unless otherwise provided for by law, shall be filled by appointment by the governor, until the next general election after such vacancy occurs, when such vacancy shall be filled by election.

1899, 5th Ses. p. 68, Sec. 3; 1891, 1st Ses. p. 60, Sec. 12.

Section 912. Vacancies Generally, how Filled: Vacancies shall be filled in the following manner:

In the office of the reporter of the supreme court, by the supreme court. In all other state and judicial district offices, and in the membership of any board or commission created by the state, where no other method is specially provided, by the governor. In county and precinct offices, by the county board; and in the membership of such board, by the governor. In township offices, by the town board; but where the offices of the town board are all vacant, the clerk shall appoint; and if there be no town clerk, the county auditor shall appoint. In city and village offices, by the mayor and council or board of trustees.

1899, 5th Ses. p. 68, Sec. 4; 1891, 1st Ses. p. 106, Sec. 171.

POWER TO APPOINT: The appointing power cannot forestall the rights and prerogatives of their own

successors by appointing successors to offices, expiring after their power to appoint has itself expired.—*People v. Ward*, 107 Cal. 236, 40 Pac. 538.

Section 913. Appointment on Petition: No appointment to fill a vacancy in office must be made by the board except upon petition, signed by at least thirty qualified electors of the county, if for a county office, or by not less than fifteen of the qualified electors of the precinct, or district, if for a precinct or district office.

1887 R. S. Sec. 1765.

Section 914. Term of Office: Every officer elected or appointed for a fixed term shall hold office until his successor is elected or appointed and qualified, unless the statute under which he is elected or appointed expressly declares the contrary. This section shall not be construed in any way to prevent the removal or suspension of such officer, during or after his term in cases provided by law.

1899, 5th Ses. p. 69, Sec. 5; 1891, 1st Ses. p. 106, Sec. 172.

HOLDING OVER: Holding over abiding the election of a successor is as much a part of a term of office as that which succeeds it, where a person law-

fully continues in office by virtue of his original election and qualification after the expiration of the statutory period, but before his successor is elected and qualified.—*Baker City v. Murphy*, 30 Or. 405, 42 Pac. 133, 35 L. R. A.

88. In *State v. Albert*, 55 Kan. 154, 40 Pac. 286, it was held that the probate judge was not entitled to hold over after the end of his term, on the death, previous to the end of his term, of a person elected and qualified as his successor in office. And in *State v. Page*

(Mont.), 50 Pac. 719, under a provision similar to that contained in this section, it was held to apply only where the term of office of an incumbent had expired and not to a case of vacancy caused by resignation.

Section 915. Appointments in Writing; Continue how Long: Appointments under the provisions of this chapter shall be in writing, and continue until the next election, at which the vacancy shall be filled and until a successor is elected and qualified, and be filed with the secretary of state, or proper township clerk, or proper county auditor, respectively.

1899, 5th Ses. p. 69, Sec. 6; 1891, 1st Ses. p. 106, Sec. 173.

Section 916. Possession of Office When Vacancy Occurs: When a vacancy occurs in a public office, possession shall be taken of the office room, and of the books, papers, and all things pertaining to the office, to be held until the election or appointment and qualification of a successor as follows:

Of the office of county clerk, by his deputy, if there be one; if not, by the county commissioners; and in case of any delay in the election or appointment of a successor to the county clerk, his deputy shall continue to discharge the duties of the office, being responsible for the conduct and management thereof upon his official bond. Of the office of county treasurer, by the sheriff. Of any of the state officers, by the governor, or in his absence or inability at the time of the occurrence as follows: Of the secretary of state, by the treasurer; of the auditor of public accounts, and superintendent of public instruction, by the secretary of state; of the treasurer, by the secretary of state and auditor of public accounts, who shall make an inventory of the money and warrants therein, sign the same and transmit it to the governor, if he be in the state; and the secretary of state shall take the keys of the safes and desks, after depositing the books, papers, money and warrants therein, and the auditor shall take the key of the office room.

1899, 5th Ses. p. 69, Sec. 7; 1891, 1st Ses. p. 106, Sec. 174.

Section 917. When Vacancies Filled by Election: Vacancies occurring in any state, judicial district, county, precinct, township or any public elective office, thirty days prior to any general election shall be filled thereat except vacancies occurring in the office of probate judge or justice of the peace, which shall be filled by appointment by the county commissioners.

1899, 5th Ses. p. 69, Sec. 8; 1891, 1st Ses. p. 107, Sec. 175.

Section 918. Commissioners to be Appointed from Proper District: Whenever the governor appoints a county commissioner to fill a vacancy in any county, he shall appoint a person who is a resident of the commissioner district of the county in which the vacancy exists.

1899, 5th Ses. p. 69, Sec. 10; 1891, 1st Ses. p. 61, Sec. 18.

Section 919. Vacancy in Congress Filled by Election:

Whenever any vacancy shall occur in the office of representative in congress from the state, and congress will convene prior to the next general election, the governor shall order a special election to fill such vacancy at the earliest practicable time, and ten days notice of such election shall be given. Otherwise such vacancy shall be filled at the next general election.

1899, 5th Ses. p. 69, parts of Secs. 11 1st Ses. p. 61, Sec. 19.
and 12, rewritten by Commission; 1891,

Section 920. Vacancy in Legislature Filled by Election:

When a vacancy occurs in either house of the legislature, and the body in which such vacancy exists will convene prior to the next general election, the governor shall order a special election to fill such vacancy at the earliest practicable time, and ten days notice of such election shall be given.

1899, 5th Ses. p. 70, Sec. 12; 1891, 1st Ses. p. 107, Sec. 176.

Section 921. Term of Office by Appointment and by Election:

Any of the said officers that may be elected or appointed to fill vacancies may qualify and enter upon the discharge of the duties of their offices immediately thereafter; and, if elected, they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified; but if appointed they shall hold the same only until their successors are elected and qualified.

1899, 5th Ses. p. 70, first part of Sec. 13; 1891, 1st Ses. p. 60, Sec. 15.

Section 922. Notice of Removal of Officer: Whenever an officer is removed, declared insane or convicted of a felony or offense involving a violation of his official duty, or whenever his election or appointment is declared void, the body, judge, or officer before whom the proceedings were had must give notice thereof to the officer empowered to fill the vacancy.

1887 R. S. Sec. 432.

CHAPTER XXX.**GENERAL PROVISIONS.****Section.****GENERAL PROVISIONS.**

923. Provisions of this title govern all elections.
924. Constitutional amendments and other questions.
925. Publication of election laws.

Section.**RESPECTING CONTESTS.**

926. Grounds of contest.
927. Incumbent defined.
928. Misconduct of judges of election.
929. General reference.

Section 923. Provisions of this Title Govern All Elections:

That the provisions of this title shall regulate and govern all elections hereafter held in the State of Idaho for election of all officers provided for by the constitution and the laws of the State of Idaho, at either general or special elections, except school district elections.

1899, 5th Ses. p. 33, Sec. 1; 1895, 3d p. 35, which was an amendment of laws
Ses. p. 8, amending laws of 1893, 2d Ses. of 1891, 1st Ses. p. 57, Sec. 1.

Section 924. Constitutional Amendments and other Questions: Whenever a proposed constitution or constitutional amendment, or other question, is to be submitted to the people of the state for popular vote, the secretary of state shall duly, and not less than thirty days before election, certify the same to the auditor of each county in the state.

Questions to be submitted to the people of a county or municipality shall be advertised in some newspaper of general circulation in the county or town to be affected at least twice, and twenty days before election.

1899, 5th Ses. p. 37, Sec. 27; 1891, 1st Ses. p. 66, Sec. 36.

Section 925. Publication of Election Laws: It shall be the duty of the secretary of state to cause to be published in pamphlet form and distributed through the county clerks of the respective counties, a sufficient number of copies of this title, and such other laws as bear upon the subject of election, as will place a copy thereof in the hands of all officers of elections.

1899, 5th Ses. p. 65, Sec. 156; 1891, 1st Ses. p. 107, Sec. 180.

GENERAL PROVISIONS RESPECTING CONTESTS.

Section 926. Grounds of Contest: The election of any person to any public office, the location or re-location of a county seat, or any proposition submitted to a vote of the people may be contested:

First.—For malconduct, fraud, or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any member of either board, sufficient to change the result.

Second.—When the incumbent was not eligible to the office at the time of the election.

Third.—When the incumbent has been convicted of felony, unless at the time of the election he shall have been restored to civil rights.

Fourth.—When the incumbent has given or offered to any elector, or any judge, clerk, or canvasser of the election, any bribe or reward in money, property, or anything of value for the purpose of procuring his election.

Fifth.—When illegal votes have been received or legal votes rejected at the polls sufficient to change the result.

Sixth.—For any error in any board of canvassers in counting votes, or in declaring the result of the election, if the error would change the result.

Seventh.—When the incumbent is in default as a collector and custodian of public money or property.

Eighth.—For any cause which shows that another person was legally elected.

1899, 5th Ses. p. 60, Sec. 119; 1891, 1st Ses. p. 98, Sec. 132.

Section 927. Incumbent Defined: The term “incumbent” in this title means the person whom the canvassers declare elected.

1899, 5th Ses. p. 61, Sec. 120; 1891, 1st Ses. p. 98, Sec. 133.

Section 928. Misconduct of Judges of Election: When the misconduct complained of is on the part of the judges of election, it shall not be held sufficient to set aside the election, unless the vote of the precinct, township or ward would change the result as to that office.

1899, 5th Ses. p. 61, Sec. 121; 1891, 1st Ses. p. 98, Sec. 134.

Section 929. General Reference: The jurisdiction of contested elections and the proceedings thereon are designated in Title II, Chapter IV of this Code and in Title XIX, Chapter CLXXVI of the Code of Civil Procedure.

New Sec. by Commission.

TITLE V.

EDUCATION. ..

- Chap. XXXI. University of Idaho.
- Chap. XXXII. State Normal Schools and Academy of Idaho.
- Chap. XXXIII. Public and Free Traveling Libraries.
- Chap. XXXIV. State Board of Education, Its Duties.
- Chap. XXXV. State Superintendent of Public Instruction.
- Chap. XXXVI. County Superintendent, His Duties.
- Chap. XXXVII. Public School Funds.
- Chap. XXXVIII. School Districts. Organization and Powers.
- Chap. XXXIX. Trustees, Election of and Duties.
- Chap. XL. Teachers in the Public Schools.
- Chap. XLI. Independent School Districts.
- Chap. XLII. County Institutes.
- Chap. XLIII. Text Books.
- Chap. XLIV. Miscellaneous Provisions.

CHAPTER XXXI.

UNIVERSITY OF IDAHO.

Section.

- 930. Establishment of location.
- 931. Board of regents, appointment, term.
- 932. Board a body corporate, organization.
- 933. Election of officers, quorum.
- 934. Powers of board over university. Prohibited instruction.
- 935. Annual report to governor.
- 936. Duty of president of university.

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- 937. Government of university.
- 938. Departments of university.
- 939. College of arts and college of letters.
- 940. Both sexes admitted.
- 941. Tuition.
- 942. Executive committee.
- 943. Duty of treasurer of board.
- 944. Payment of expenses of regents.

Section 930. Establishment of, Location: There is hereby established in this state, at the town of Moscow in the county of Latah, an institution of learning, by the name and style of "The University of Idaho."

1889, 15th Ses. p. 17. Sec. 1.

The location of the university as es-

tablished by law is confirmed by the constitution of Idaho.—Art. IX, Sec. 10.

Section 931. Board of Regents, Appointment, Term: The government of the university shall vest in a board of regents, to consist of five members chosen from the state at large, which board the governor shall nominate, and, with the advice and consent of the senate, appoint.

The said board shall be non-partisan, no more than three of whom shall be of the same political party.

The terms of office of said regents shall be six years from the first Monday in February in the year in which appointed: *Provided*, That the regents appointed in the year 1901 shall hold their office during the following periods: One shall be appointed for a term of two years, two shall be appointed for a term of four years, and two shall be appointed for a term of six years.

The governor shall have power to fill vacancies in the board by appointment, which appointment shall be valid until the last day of the regular session of the legislature following such appointment.

1901, 6th Ses. p. 15.

Section 932. Board a Body Corporate. Organization:

The board of regents and their successors in office, shall constitute a body corporate, by the name of "the regents of the University of Idaho," and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and other property of said university. The board shall elect a president, secretary and treasurer, who shall perform such duties as shall be prescribed by the by-laws of the board. The secretary shall keep a faithful record of all the transactions of the board and of the executive committee thereof. The treasurer shall perform all the duties of such office, subject to such regulations as the board may adopt, and for the faithful discharge of all his duties shall execute a bond in such sum as the board may direct.

1889, 15th Ses. p. 17, Sec. 3.

REGENTS, POWER OF: The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law.—Const. of Idaho, Art. IX, Sec. 10.

CORPORATION UNDER CONTROL OF COURTS: An act which provides that the board of regents shall be a body corporate under the name of "The Regents of the University of Kansas," etc., makes the board of regents such a corporation as will be restrained and held within the bounds of its lawful authority by the exercise of the original jurisdiction of courts in quo war-

ranto.—State ex rel. Little v. Board of Regents of the University of Kansas, 55 Kan. 389, 29 L. R. A. 378, 40 Pac. 656.

Note.—For a general discussion of the nature of an incorporated institution belonging to the state, see note to State ex rel. Little v. Board of Regents of University of Kansas, reported in 29 L. R. A. 378, 40 Pac. 656.

REGENTS ARE PUBLIC OFFICERS: Directors of constitutional state institutions are public officers.—People v. McKee, 68 N. C. 429; People v. Bledsoe, 68 N. C. 457; State v. Holcomb (Neb.), 64 N. W. Rep. 437; Dulam v. Willson, 53 Mich. 392, 51 Am. Rep. 128, 19 N. W. 112.

Section 933. Election of Officers, Quorum: The time of the election of the president, secretary and treasurer of said board, and the duration of their respective terms of office and the times for holding the regular annual meeting and such other meetings as may be required, and the manner of notifying the same, shall be determined by the by-laws of the board. A majority of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

1889, 15th Ses. p. 18, Sec. 4.

Section 934. Power of Board Over University. Prohibited Instruction: The board of regents shall enact laws for the government of the university in all its branches, elect a president and the requisite number of professors, instructors, officers and employees, and fix the salaries and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction either sectarian in religion or partisan in politics shall ever be allowed in any department of the university, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of regents or in the election of professors, teachers or other officers of the university, or in the admission of students thereto, or for any purpose whatever. The board of regents shall have power to remove the president or any professor, instructor or officer of the university, when, in their judgment, the interests of the university require it. The board may prescribe rules and regulations for the management of the libraries, cabinet, museum, laboratories and all other property of the university and of its several departments, and for the care and preservation thereof, with penalties and forfeitures, by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction of such action.

1889, 15th Ses. p. 18, Sec. 5.

PROFESSOR NOT A PUBLIC OFFICER: A professor employed by the board of regents of a state university is not a public officer, but an employee by contract.—Butler v. Board of Regents of University, 32 Wis. 124.

Power to remove teachers: See note to Sec. 951.

SECTARIAN INSTRUCTION: The term "sectarian instruction" manifestly refers exclusively to instruction in religious doctrines, and the prohibition is only aimed at such instruction as is sectarian; that is to say instruction in religious doctrines which are believed by some religious sects and rejected by others. Hence, to teach the existence of a supreme being of infinite wisdom, power and goodness, and that it is the highest duty of all men to adore, obey and love him, is not sectarian because all religious sects so believe and teach. The instruction becomes sectarian when it goes further, and inculcates

doctrine or dogma concerning which the religious sects are in conflict. The reading from the Bible in the schools, although without comment on the part of the teacher, is instruction. The use of any version of the Bible as a text-book there, and the stated reading of it therein by the teachers to the pupils, is forbidden by this section, notwithstanding children who may wish to do so because of conscientious scruples are at liberty to absent themselves from the school room during the time of such reading. But text books founded upon the fundamental teachings of the Bible, or which contain extracts therefrom, and such portions of the Bible as are not sectarian may be used in the secular instruction of pupils in such schools, and to inculcate good morals.—State v. District Board, 76 Wis. 177, 44 N. W. 967; see Hysong v. School District, 164 Pa. St. 629, 30 Atl. 482; see Const. of Idaho, Art. IX, Sec. 6.

Section 935. Annual Report to Governor: At the close of each fiscal year, the regents, through their president, shall make a report in detail, to the governor, exhibiting the progress, conditions and wants of the university, the course of study, the number of professors and students, the amount of receipts and disbursements, together with the nature, costs and results of all important investigations and experiments, and such other information as they may deem important.

1889, 15th Ses. p. 18, Sec. 7.

Section 936. Duty of President of University: The president of the university shall be president of the faculty or of the several faculties as they may be hereafter established, and the executive head of the instructional force in all its departments; as such, he shall have authority, subject to the board of regents, to give general direction to the instruction and scientific investigation of the university, and so long as the interests of the institution require it he shall be charged with the duties of one of the professorships.

1889, 15th Ses. p. 18, portion of Sec. 8

Section 937. Government of University: The immediate government of the university shall be intrusted to the faculty, but the regents shall have the power to regulate the course of instruction and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, and to confer upon the faculty by by-laws the power to suspend or expel students for misconduct or other cause prescribed by such by-laws.

1889, 15th Ses. p. 19, portion of Sec. 8.

Section 938. Departments of University: The object of the University of Idaho, shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, and to this end it shall consist of the following colleges or departments, to-wit:

First.—The college or department of arts.

Second.—The college or department of letters.

Third.—The professional or other colleges or departments as may from time be added thereto or connected therewith.

1889, 15th Ses. p. 19, Sec. 9.

Section 939. College of Arts and College of Letters: The college or department of arts shall embrace courses of instruction in mathematical, physical and natural sciences with their application to the industrial arts, such as agriculture, mechanics, engineering, mining and metallurgy, manufactures, architecture and commerce and such branches included in the college of letters, as shall be necessary to a proper finess of the pupils in the scientific and practical courses for their chosen pursuits, and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the university, each with its own faculty and appropriate title. The college of letters shall be co-existent with the college of arts, and shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the college of arts as the regents of the university shall prescribe.

1889, 15th Ses. p. 19, Sec. 10.

Section 940. Both Sexes Admitted: The university shall be open to female as well as male students, under such regulations and restrictions as the board of regents may deem proper.

1889, 15th Ses. p. 19, Sec. 11.

Section 941. Tuition: No student who shall have been a resident of the state for one year, next preceding his admission shall be required to pay any fees for tuition in the university, except in a professional department and for extra studies. The regents may prescribe rates of tuition for any pupil in a professional department, or who shall not have been a resident as aforesaid, and for teaching extra studies.

1889, 15th Ses. p. 19, Sec. 12.

FEE CANNOT BE CHARGED FOR ADMISSION TO LIBRARY: A statute which provides that admission into the university shall be free to all the inhabitants of the state, is intended to open the way to a higher education to the poorest of the youth of the state, and whenever the board of regents place any unwarranted obstacle in the way of the accomplishment of that end, they affect and oppose the public interest. They have no power to collect a fee from students of the state university for the use of the library,

or to exclude students from the use of the library for the non-payment of such fees.—State ex rel. Little v. Regents of the University of Kansas, 55 Kan. 389, 29 L. R. A. 378, 40 Pac. 656.

FEES FOR TUITION: The supreme court of Wisconsin in State v. Regents, 54 Wis. 159, 11 N. W. 472, construed the words "fees for tuition," as contained in a section of their statute, almost identical with this section, to mean fees for instruction only, and not charges made to students to meet incidental expenses.

Section 942. Executive Committee: The president and secretary ex-officio, and one member of the board to be appointed by the president thereof, shall constitute an executive committee of said board, whose duties shall be prescribed by the by-laws of the board.

1889, 15th Ses. p. 20, Sec. 15.

Section 943. Duty of Treasurer of Board: The treasurer of said board shall, out of any moneys in his hands belonging to said board, pay all orders drawn upon him by the president and secretary thereof, when accompanied by vouchers fully explaining the character of the expenditure, and the books and accounts of the treasurer shall at all times be opened to the inspection of the board. The treasurer shall make an annual report to the president of the board of all transactions connected with the duties of his office.

1889, 15th Ses. p. 20, Sec. 17.

Regents have control of university funds: Const. Art. IX, Sec. 10.

Section 944. Payment of Expenses of Regents: The regents shall receive the actual amount of their expenses in traveling to and from, and in attendance upon, all meetings of the board or incurred in the performance of any duty in pursuance of any direction of the board; accounts of such expenses shall be duly authenticated and audited by the board, and be paid on their order by the treasurer out of any fund belonging to the university not otherwise appropriated; no regent shall receive any pay, mileage or per diem, except as above prescribed.

1889, 15th Ses. p. 20, Sec. 19.

CHAPTER XXXII.

STATE NORMAL SCHOOLS AND ACADEMY OF IDAHO.

Section.

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- 948. Control of buildings and property.
- 949. Use of funds.
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- 951. Employment of teachers.
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- 955. Admission of pupils. Qualifications.
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- 973. Admission of pupils. Qualifications.
- 974. Pupils from other states.
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ACADEMY OF IDAHO.

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- 986. Funds under control of trustees, auditing accounts.
- 987. Trustees, regular and special meetings.
- 988. Trustees to elect principal and teachers. Salaries. Course of study.
- 989. Rules for admission of pupils.
- 990. Trustees allowed expenses.
- 991. Trustees, vacancies, appointment to fill.
- 992. Trustees, semi-annual report to governor.
- 993. Trustees to watch over morals of pupils. No sectarian test.

LEWISTON NORMAL SCHOOL.

Section 945. Establishment of, Object: That a normal school for the State of Idaho is hereby established in the city of Lewiston, in the county of Nez Perce, to be called the Lewiston State Normal School, the purpose of which shall be for training and educating teachers in the art of instruction and governing in the public schools of this state, and of teaching the various branches that pertain to a good common school education.

1899, 5th Ses. p. 164, Sec. 1; 1893, 2d Ses. p. 6, Sec. 1.

Section 946. Board of Trustees. Appointment, Terms: The said Lewiston State Normal School shall be under the direction of a board of trustees to be known as "the board of trustees of the Lewiston State Normal School." The said board of trustees shall consist of six members, to-wit: B. F. Morris and C. W. Shaff, who shall hold their terms of office until January 27, A. D. 1901; Jno. P. Vollmer and Geo. E. Erb, who shall hold their terms of office until January 27, A. D. 1903; and James W. Reid and James W. Poe, who shall hold their terms of office until Jan-

uary 27th, A. D. 1905, and their successors shall be appointed for the term of six years by the governor of the State of Idaho, by and with the advice and consent of the senate. Before entering upon the duties of his office, each of said trustees shall take and subscribe an oath or affirmation before some person duly authorized to administer the same, that he will support the constitution of the United States and State of Idaho, and will faithfully and impartially discharge the duties of the office of trustee of the Lewiston State Normal School, which oath or affirmation shall be filed in the office of the secretary of state.

1899, 5th Ses. p. 369, amending laws of 1899, 5th Ses. p. 165, Sec. 2; 1893, 2d Ses. p. 7, Sec. 2. See note to preceding chapter, Sec. 932.

Section 947. Powers of Board of Trustees. Officers:

The said board of trustees may conduct its proceedings in such manner as will best conduce to the proper dispatch of business. A majority of the board of trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. No member of said board of trustees shall participate in any proceeding in which he has any pecuniary interest. Every vote and official act of the said board of trustees shall be entered of record. Said board of trustees shall have an official seal, which shall be judicially noticed. Said board of trustees may sue and be sued. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of the said board of trustees. At their first meeting, and annually thereafter, the said board of trustees shall elect from their number a president and a secretary. The state treasurer shall be ex-officio treasurer of said board of trustees. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said board, and an itemized account of all expenditures authorized by said board.

1899, 5th Ses. p. 165, Sec. 3; 1893, 2d Ses. p. 7, Sec. 3.

Section 948. Control of Buildings and Property:

The said board of trustees are hereby authorized, and it is made their duty, to take and at all times to have general supervision and control of all buildings and property appertaining to said normal school; and to have general charge and control of the construction of all buildings to be built. They shall have power to let contracts for building and completion of any such buildings, and the entire supervision of their construction.

1899, 5th Ses. p. 165, Sec. 4; 1893, 2d Ses. p. 7, Sec. 4.

Section 949. Use of Funds: One-half of all funds appropriated for the use and benefit of normal schools in the State of Idaho, from every source, including sales of land donated by the government of the United States to the State of Idaho, for the establishment and maintenance of state normal schools, shall be under the direction and control of the said board of trustees subject to the provisions herein contained. The treasurer of the board shall pay out

of such funds all orders or drafts for money to be expended under the provisions of this chapter. Such orders or drafts to be drawn by the state auditor on certificates of the secretary countersigned by the president of the said board of trustees. No such certificates shall be given except upon accounts audited and allowed by the said board: *Provided*, Not more than fifty thousand acres of said lands shall ever be sold for said purpose of establishing and maintaining the Lewiston State Normal School, and said board of trustees shall never use more of said funds than necessary for the purpose of carrying out the provisions of this chapter.

1899, 5th Ses. p. 165, Sec. 5; 1893, 2d Ses. p. 8, Sec. 5.

Lands donated by the government: Admission bill, Sec. 11.

State appropriation for 1899-1900: 5th Ses. p. 458.

Improvement bonds: 1899, 5th Ses. p. 373.

Note.—The Albion State Normal School was established by the same legislature that established the Lewiston school: Sec. 962 et seq.

Section 950. Meetings of the Board: The board of trustees shall hold two regular meetings annually, at the said city of Lewiston, but special meetings may be called by the president of the board by sending written notice at least ten days before such meeting to each member.

1899, 5th Ses. p. 166, Sec. 6.

Section 951. Employment of Teachers: The board of trustees shall have power to elect a principal and all other teachers that may be deemed necessary, to fix the salaries of the same and to prescribe their duties. They shall have power to remove either the principal, assistant, or teachers, and appoint others in their stead.

1899, 5th Ses. p. 166, Sec. 7; 1893, 2d Ses. p. 8, Sec. 7.

POWER TO REMOVE TEACHERS: Every contract by a teacher for employment, made with the board of trustees, includes as a part of it the statutory provisions for removal by the board, and no by-law or contract of the board can bargain away, limit, or restrict the statutory power of the board

to remove a teacher.—Gillan v. Regents of Normal Schools, 88 Wis. 7, 24 L. R. A. 336, 58 N. W. 1042.

As to the power to make official contracts binding on successors in office, see note to Sheldon v. Fox (Kan.), 16 L. R. A. 257.

See also Head v. University, 19 Wall. 526.

Section 952. Course of Study. Diplomas: It shall be the duty of the board of trustees to prescribe the course of study and the time and standard of graduation, and to issue such certificates and diplomas as may from time to time be deemed suitable. These certificates and diplomas shall entitle the holder to teach in public schools of any county in this state for the time and in the grade specified in the certificate or diploma.

1899, 5th Ses. p. 166, Sec. 8; 1893, 2d Ses. p. 8, Sec. 8.

Section 953. Books, Apparatus, Etc.: The board of trustees shall prescribe the text books, apparatus, and furniture, and provide the same, together with all necessary stationery for the use of pupils.

1899, 5th Ses. p. 166, Sec. 9; 1893, 2d Ses. p. 9, Sec. 9.

Section 954. Training or Model School: The board of trustees shall, when deemed expedient, establish and maintain a

training or model school or schools, in which the pupils of the normal school shall be required to instruct classes under the supervision and direction of experienced teachers.

1899, 5th Ses. p. 166, Sec. 10; 1893, 2d Ses. p. 9, Sec. 10.

Section 955. Admission of Pupils. Qualifications:

The board of trustees shall ordain such rules and regulations for the admission of pupils to said normal school as they shall deem necessary and proper. All classes may be admitted into said normal school who are admitted without restriction into the public schools of the state: *Provided*, The applicant, if a male, must be not less than sixteen years of age, or if a female, not less than fifteen years of age. Applicants must also present letters of recommendation from the county superintendent of public instruction of the county in which they reside, certifying to their good moral character, and their fitness to enter the normal school. Before entering, all applicants must sign the following declaration: "We hereby declare that our purpose in entering the Lewiston State Normal School is to fit ourselves for the profession of teaching, and that it is our intention to engage in teaching in the public schools of this state."

1899, 5th Ses. p. 166, Sec. 11; 1893, 2d Ses. p. 9, Sec. 11.

Section 956. Pupils From Other States: Pupils from other states and territories may be admitted to all the privileges of the said normal school, on presenting letters of recommendation from the executive or state school superintendent thereof and the payment of one hundred dollars. Pupils from other states shall not be required to sign the declaration named in the foregoing section.

1899, 5th Ses. p. 167, Sec. 12; 1893, 2d Ses. p. 9, Sec. 12.

Section 957. Lectures: Lectures in chemistry, comparative anatomy, agricultural chemistry, and any other science or any branch of literature that the board of trustees may direct, may be delivered to those attending such school in such manner and on such conditions as the board of trustees may prescribe.

1899, 5th Ses. p. 167, Sec. 13; 1893, 2d Ses. p. 9, Sec. 13.

Section 958. Expenses of Members of Board: The actual and necessary personal expenses incurred by the members of said board of trustees, in carrying out the provisions of this chapter, shall be paid on the proper certificate out of any funds belonging to said normal school, in the hands of the treasurer.

1899, 5th Ses. p. 167, Sec. 14; 1893, 2d Ses. p. 10, Sec. 14.

Section 959. Vacancies in Board, How Filled: It shall be the duty of the governor of the state to fill by appointment all vacancies that may, from any cause occur in the said board of trustees.

1899, 5th Ses. p. 167, Sec. 15; 1893, 2d Ses. p. 10, Sec. 15.

Section 960. Annual Report: The president and secretary of the board of trustees shall on the first day of January of each year, transmit to the governor of the state, a full report of the doings of

the said board of trustees, the progress and condition of the said normal school, together with a full report of the expenditures of the same for the previous year, setting forth each item in full, and the date thereof, and such recommendations as they deem proper for the good of said normal school.

1899, 5th Ses. p. 167, Sec. 16; 1893, 2d Ses. p. 10, Sec. 16.

Section 961. Morals of Pupils. Religious Tests Prohibited: The board of trustees in their regulations, and the principal and assistants in their supervision and government of the said school, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance upon the same, but no religious or sectarian tests shall be applied in the selection of teachers, and none shall be adopted in said school.

1899, 5th Ses. p. 167, Sec. 17; 1893, 2d Sectarian instruction: See note to
Ses. p. 10, Sec. 17. Sec. 934.

ALBION NORMAL SCHOOL.

Section 962. Establishment of, Object: That a normal school for the State of Idaho is hereby established at or near the town of Albion in the county of Cassia, to be called the Albion State Normal School, the purpose of which will be for training and educating teachers in the art of instruction and governing in the public schools of the state, and of teaching the various branches that pertain to a good common school education.

1899, 5th Ses. p. 228, Sec. 1; 1893, 2d Ses. p. 179, Sec. 1.

Section 963. Board of Trustees, Appointment, Term, Oath: That a non-partisan board of trustees, to be known as "The Board of Trustees of the Albion State Normal School," consisting of five members, no more than three of whom shall be of the same political party, is hereby created for the management and control of the Albion State Normal School. Said trustees shall be appointed by the governor, by and with the advice and consent of the senate, for a term of two years, and, until their successors are appointed and qualified, and before entering upon the duties of their office, each of said trustees, shall take and subscribe an oath or affirmation that he will support the constitution of the United States and the constitution and laws of the State of Idaho, and will faithfully and impartially discharge the duties of said office, which oath or affirmation shall be filed in the office of secretary of state.

1899, 5th Ses. p. 229, Sec. 2; 1897, 4th Ses. p. 180, Sec. 2.
Ses. p. 43, Sec. 2, repealing act 1893, 2d

Section 964. Vesting Title: All the rights, powers, duties, and title to real estate or personal property belonging to or vested in said Albion State Normal School are hereby vested in the trustees of said school herein provided for.

1899, 5th Ses. p. 229, Sec. 3; 1897, 4th Ses. p. 181, Sec. 2.
Ses. p. 43, Sec. 3, repealing act 1893, 2d

Section 965. General Provisions Concerning Board: The said board of trustees may conduct its proceedings in such man-

ner as will best conduce to the proper dispatch of business.

A majority of the board of trustees shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. No member of said board of trustees shall participate in any proceeding in which he has any pecuniary interest. Every vote and official act of said board of trustees shall be entered of record. Said board of trustees shall have an official seal, which shall be judicially noticed. Said board of trustees may sue and be sued. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of the said board of trustees. At their first meeting, and annually thereafter, the said board of trustees shall elect from their members a president and secretary. The state treasurer shall be ex-officio treasurer of said board of trustees. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said board, and an itemized account of all expenditures, authorized by said board.

1899, 5th Ses. p. 229, Sec. 4; 1893, 2d Ses. p. 181, Sec. 3.

Section 966. Control of Buildings and Property:

The said board of trustees are hereby authorized, and it is made their duty, to take and at all times to have general supervision and control of all buildings and property appertaining to said normal school, and to have general charge and control of the construction of all buildings to be built. They shall have power to let contracts for building and completion of any such buildings, and the entire supervision of their construction.

1899, 5th Ses. p. 229, Sec. 5; 1893, 2d Ses. p. 181, Sec. 4.

Section 967. Use of Funds:

All funds appropriated for the use and benefit of said normal school, from every source, including the pro rata share of the available proceeds of sales of lands granted by the government of the United States to the State of Idaho for the establishment and maintenance of state normal schools due to said normal school shall be under the direction and control of the said board of trustees subject to the provisions herein contained. The treasurer of the board of trustees shall pay out of such funds all orders or drafts for money to be expended under the provisions of this subdivision. Such orders or drafts shall be drawn by the state auditor on certificates of the secretary, countersigned by the president of said board of trustees, and approved by the state board of examiners. No such certificate shall be given except on accounts audited and allowed by said board of trustees.

1899, 5th Ses. p. 229, Sec. 6; 1893, 2d Ses. p. 181, Sec. 5.

Funds: Lands donated by the gov-

ernment: Admission bill, Sec. 11; state appropriation for 1899-1900, 5th Ses. p. 458.

Section 968. Meetings of Board:

The board of trustees shall hold two regular meetings annually, at the said town of Albion, but special meetings may be called by the president of the board by sending written notice of at least ten days to each member.

1899, 5th Ses. p. 230, Sec. 7; 1893, 2d Ses. p. 182, Sec. 6.

Section 969. Employment of Teachers: The board of trustees shall have power to elect a principal and all other teachers that may be deemed necessary, to fix the salaries of the same and to prescribe their duties. They shall have power to remove either the principal, assistant, or teachers, and appoint others in their stead.

1899, 5th Ses. p. 230, Sec. 8; 1893, 2d Ses. p. 182, Sec. 7.

Power to remove teachers: See note to Sec. 951.

Section 970. Course of Studies. Diplomas: It shall be the duty of the board of trustees, to prescribe the course of study, and the time, and standard of graduation, and to issue such certificates and diplomas as may from time to time be deemed suitable. These certificates and diplomas shall entitle the holders to teach in the public schools in any county in this state for the time and in the grade specified in the certificate or diploma.

1899, 5th Ses. p. 230, Sec. 9; 1893, 2d Ses. p. 182, Sec. 8.

Section 971. Books, Apparatus, Etc.: The board of trustees shall prescribe the text books, apparatus, and furniture, and provide the same, together with all necessary stationery for the use of pupils.

1899, 5th Ses. p. 230, Sec. 10; 1893, 2d Ses. p. 182, Sec. 9.

Section 972. Training or Model School: The board of trustees shall, when deemed expedient, establish and maintain a training or model school or schools in which the pupils of the normal school, shall be required to instruct classes, under the supervision and direction of experienced teachers.

1899, 5th Ses. p. 230, Sec. 11; 1893, 2d Ses. p. 182, Sec. 10.

Section 973. Admission of Pupils. Qualifications: The board of trustees shall ordain such rules and regulations for the admission of pupils to said normal school as they shall deem necessary and proper. All classes may be admitted into the said normal school who are admitted without restriction into the public schools of the state: *Provided*, The applicant if a male, must be not less than sixteen years of age or if a female not less than fifteen years of age.

Applicants must also present letters of recommendation from the county superintendent of public instruction, of the county in which they reside, certifying to their good moral character and their fitness to enter the normal school. Before entering all applicants must sign the following declaration:

"We hereby declare that our purpose in entering the Albion State Normal School is to fit ourselves for the profession of teaching, and that it is our intention to engage in teaching in the public schools of this state."

1899, 5th Ses. p. 230, Sec. 12; 1893, 2d Ses. p. 182, Sec. 11.

Section 974. Pupils From Other States: Pupils from other states and territories may be admitted to all the privileges of said normal school on presenting letters of recommendation from the executive, or state school superintendent thereof, and paying such

tuition fee as the board of trustees may prescribe. Each of such pupils must sign the following declaration: "I hereby declare that my purpose in entering the Albion State Normal School is to fit myself for the profession of teaching."

1899, 5th Ses. p. 230, Sec. 13; 1895, 3d Ses. p. 183, Sec. 12.
1899, 5th Ses. p. 19, amending laws of 1893, 2d

Section 975. Lectures: Lectures in chemistry, comparative anatomy, the mechanical arts, agricultural chemistry, and any other science, or any branch of literature that the board of trustees may direct may be delivered to those attending such schools, in such manner and on such conditions as the board of trustees may prescribe.

1899, 5th Ses. p. 231, Sec. 14; 1893, 2d Ses. p. 183, Sec. 13.

Section 976. Expenses of Members of Board: The actual and necessary personal expenses incurred by the members of said board of trustees in carrying out the provisions of this chapter, shall be paid on the proper certificate out of any funds belonging to said normal school, in the hands of the treasurer.

1899, 5th Ses. p. 231, Sec. 15; 1893, 2d Ses. p. 183, Sec. 14.

Section 977. Vacancies in Board, How Filled: It shall be the duty of the governor of the state to fill by appointment all vacancies that may from any cause occur in the said board of trustees.

1899, 5th Ses. p. 231, Sec. 16; 1893, 2d Ses. p. 183, Sec. 15.

Section 978. Annual Report: The president and secretary of the said board of trustees, shall on the first days of January and July of each year, transmit to the governor of the state, a full report of the doings of the said board of trustees, the progress and condition of the said normal school, together with a full report of the expenditures of the same for the previous six months, setting forth each item in full, and the date thereof, and such recommendations as they deem proper for the good of said normal school.

1899, 5th Ses. p. 231, Sec. 17; 1893, 2d Ses. p. 183, Sec. 16.

Section 979. Morals of Pupils. Religious Tests Prohibited: The board of trustees in their regulations, and the principal and assistant in their supervision and government of the said school, shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance upon the same, but no religious or sectarian test shall be applied in the selection of teachers and none shall be adopted in the said school.

1899, 5th Ses. p. 231, Sec. 18; 1893, 2d Ses. p. 183, Sec. 17.

ACADEMY OF IDAHO.

Section 980. Establishment, Purpose of: That a school which shall be called the Academy of Idaho, is hereby established at the city of Pocatello, Idaho, the purpose of which shall be the teaching of all the branches commonly taught in academies, including also the various studies pertaining to a good common school educa-

tion, and such special courses as are usually taught in business colleges.

1901, 6th Ses. p. 17, Sec. 1.

Section 981. Board of Trustees, Appointment, Oath:

That a non-partisan board of trustees to be known as the "Board of Trustees of the Academy of Idaho," consisting of six (6) members, no more than three of whom shall be of the same political party, is hereby created for the management and control of said academy. Said trustees shall be appointed by the governor by and with the advice and consent of the senate for terms of six years, and until their successors are appointed and qualified: *Provided*, That of the first board appointed, two members shall be appointed for two years, two members for four years and two members for six years. Before entering upon the duties of their office, each of said trustees shall take and subscribe an oath or affirmation that he will support the constitution of the United States and the constitution and laws of the State of Idaho, and will faithfully and impartially discharge the duties of said office, which oath, or affirmation, shall be filed in the office of the secretary of state.

1901, 6th Ses. p. 18, Sec. 2.

Section 982. Title to Property Vested in Trustees:

All rights in and title to real estate or personal property belonging to or vested in said academy are hereby vested in said board of trustees.

1901, 6th Ses. p. 18, Sec. 3.

Section 983. Trustees, Conduct of Business, Quorum, Seal, Chairman: The said board of trustees may conduct its proceedings in such manner as will best conduce to the proper dispatch of business.

A majority of the board of trustees shall constitute a quorum for the transaction of business, but a smaller number may adjourn from time to time. No member of said board of trustees shall participate in any proceedings in which he has any pecuniary interest. Every vote and official act of said board of trustees shall be entered of record. Said board of trustees shall have an official seal which shall be judicially noticed. Said board of trustees may sue and be sued. No vacancy in the board of trustees shall impair the right of the remaining trustees to exercise all the powers of said board of trustees. At their first meeting and annually thereafter, the said board shall elect from their number a president and a secretary. The state treasurer shall be ex-officio treasurer of said board of trustees. It shall be the duty of the secretary to keep an exact and detailed account of the doings of said board, an itemized account of all the expenditures authorized by said board.

1901, 6th Ses. p. 18, Sec. 4.

Section 984. Trustees to have Control, Contracts for Building: The said board of trustees are hereby authorized and it is made their duty to take and at all times to have general

supervision and control of all buildings and property appertaining to said academy, and to have general charge and control of the construction of all buildings, to be built. They shall have power to let contracts for building any such buildings and also the entire supervision of their construction.

1901, 6th Ses. p. 19, Sec. 5.

Section 985. Appropriation of Public Lands, Proceeds: Forty thousand (40,000) acres of the lands granted to the State of Idaho by an act of congress, entitled "An act to provide for the admission of the State of Idaho into the Union," approved July 3rd, 1890, "for other state charitable, educational, penal and reformatory institutions," are hereby appropriated and set apart, for the exclusive use and benefit of said academy, said lands to be held, disposed of, and the proceeds thereof used and applied for the benefit of said academy subject to the provisions of said admission bill and of the constitution of the State of Idaho, and, so far as may be practicable, in conformity with the established procedure of holding, disposing of, and applying the proceeds of the sales of lands granted for the establishment and maintenance of state normal schools in Idaho.

1901, 6th Ses. p. 19, Sec. 6.

Section 986. Funds Under Control of Trustees, Auditing Accounts: All funds appropriated for the use and benefit of said academy, from every source, including the available proceeds from the sales of said land, and the sale of bonds, shall be under the control and direction of said board of trustees, subject to the provisions herein contained. The treasurer of the board of trustees shall pay out of such funds all orders or drafts for money to be expended under the provisions of this sub-division. Such orders or drafts shall be drawn by the state auditor upon certificates of the secretary countersigned by the president of said board of trustees and approved by the state board of examiners. No such certificates shall be given except on accounts audited and allowed by said board of trustees.

1901, 6th Ses. p. 19, Sec. 7.

Section 987. Trustees, Regular and Special Meetings, Notice: The board of trustees shall hold two regular meetings annually, at the city of Pocatello, but special meetings may be called by the president of the board by sending written notice of at least ten days to each member.

1901, 6th Ses. p. 20, Sec. 8.

Section 988. Trustees to Elect Principal and Teachers, Salaries, Course of Study: The board of trustees shall have power to elect a principal and all other teachers that may be deemed necessary, to fix the salaries of the same, and to prescribe their duties. They shall have power to remove the principal or teachers and appoint others in their stead. It shall be the duty of the board

of trustees to prescribe the course of study and the time and standard of graduation, and to issue such certificates of graduation and diplomas as may from time to time be deemed suitable. The board of trustees shall prescribe the text books and shall provide such suitable apparatus and furniture from time to time as they may deem necessary: *Provided*, That for the purpose of prescribing a course of study, but for that purpose only, the president of the state university, and the state superintendent of public instruction shall be ex-officio members of the board of trustees.

1901, 6th Ses. p. 20, Sec. 9.

Section 989. Rules for Admission of Pupils: The board of trustees shall ordain such rules and regulations for the admission of pupils to said academy as they shall deem necessary and proper. Pupils from other states and territories may be admitted to all the privileges of such academy upon paying such reasonable tuition fee as the trustees may prescribe.

1901, 6th Ses. p. 20, Sec. 10.

Section 990. Trustees Allowed Expenses: The actual and necessary personal expenses incurred by the members of said board of trustees in carrying out the provisions of this sub-division shall be paid on the proper certificate out of any funds, belonging to said academy in the hands of the treasurer.

1901, 6th Ses. p. 20, Sec. 11.

Section 991. Trustees, Vacancies, Appointment to Fill: It shall be the duty of the governor of the state to fill by appointment all vacancies that may from any cause occur in the board of trustees.

1901, 6th Ses. p. 20, Sec. 12.

Section 992. Trustees' Semi-Annual Report to Governor: The president and secretary of said board of trustees shall on the first day of January and July of each year, transmit to the governor of the state, a full report of the doings of the said board of trustees, the progress and condition of said academy, together with a full report of the expenditures of the same for the previous six months, setting forth each item in full, and the date thereof, and such recommendations as they deem proper for the good of said academy.

1901, 6th Ses. p. 20, Sec. 13.

Section 993. Trustees to Watch Over Morals of Pupils, No Sectarian Test: The board of trustees in their regulations, and the principal and assistants in their supervision and government of said school shall exercise a watchful guardianship over the morals of the pupils at all times during their attendance upon the same, but no religious or sectarian test shall be applied in the selection of teachers and none shall be adopted in said school.

1901, 6th Ses. p. 21, Sec. 14.

CHAPTER XXXIII.

PUBLIC AND FREE TRAVELING LIBRARIES.

Section.

PUBLIC LIBRARIES.

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PUBLIC LIBRARIES.

Section 994. Power to Establish and Levy Tax for Public Library and Reading Room: The common council of every city and of every village of the State of Idaho shall have power to establish a public library and reading room, and for such purpose may annually levy and cause to be collected, as other taxes are, a tax not exceeding one mill on the dollar of the taxable property of such city or village, to constitute a library fund, which shall be kept by the treasurer separate and apart from other moneys of the city or village and be used exclusively for the purchase of books, periodicals, necessary furniture and fixtures, and whatever is required for the maintenance of such library and reading room.

1901, 6th Ses. p. 3, Sec. 1.

Section 995. Establishment of Library, Question to be Submitted to Electors: The trustees of a school district in which is situated no incorporated town or village, on the petition of twenty electors thereof, shall, upon four weeks' notice published in some newspaper of general circulation published in the county wherein such district is situated, submit to the electors thereof, at the first election held therein for the purpose of electing a member, or members, of the board of trustees, following the publication of the said notice, the question whether there shall be a public library established in such school district for the use and benefit of the citizens thereof; and those voting at such election in favor of such library shall put upon their ballots the words, "Public Library, Yes," and those voting thereat against such library the words, "Public Library, No;" and if a majority of the electors voting at such election shall vote in favor thereof, the trustees aforesaid have authority, annually, to levy upon all the taxable property in such school district a tax not exceeding one mill on the dollar valuation thereof, to be applied to the establishment and maintenance of a library as aforesaid and the procuring of suitable rooms for the same. All boards of school trustees acting under the provisions of this section shall perform the same duties required of and have the same powers and authority granted to the common council of a city or village by the provisions of this sub-division

under like conditions, and the treasurer of such board of trustees shall perform the duties of treasurer for the public library.

1901, 6th Ses. p. 3, Sec. 2.

Section 996. Government of Library and Appointment of Directors: For the government of such library and reading room there shall be a board of five directors appointed by the council of such city or village from among the citizens thereof at large, and not more than one member of the council of such city or village shall at any time be a member of said board. Such directors shall hold their office for three years from the date of appointment and until their successors are appointed, but upon their first appointment they shall divide themselves at their first meeting by lot into three classes: two members shall form the first class and shall serve for one year from the date of appointment, two members the second class and shall serve for two years from the date of appointment, and one member the third class and shall serve for three years from date of appointment. All vacancies shall be immediately reported to the proper council by the directors and shall be filled by appointment in the same manner as appointments are originally made. Appointments to complete an unexpired term shall be for the residue of the term only. No compensation shall be paid or allowed to any director in any manner whatsoever.

1901, 6th Ses. p. 4, Sec. 3.

Section 997. Powers and Duties of Directors: Said directors shall immediately after their appointment meet and organize by the election of one of their number president, and by the election of such other officers as they may deem necessary. They shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the library and reading room as may be expedient. They shall have the exclusive control of the expenditure of all moneys collected for the library fund, and the supervision, care and custody of the room or buildings constructed, leased or set apart for that purpose; and such money shall be drawn from the treasury by the proper officers upon properly authenticated vouchers of the board of directors without otherwise being audited. They may with the approval of the common council lease and occupy, or purchase or erect on purchased ground, an appropriate building: *Provided*, That not more than one-half the income in any one year can be set apart in said year for such purchase or building. They may appoint a librarian and assistants and prescribe rules for their conduct.

1901, 6th Ses. p. 4, Sec. 4.

Section 998. Use of Library and Reading Room to be Free: Every library and reading room established under this sub-division shall be forever free for the use of the inhabitants of the city, village or school district where located, always subject to such reasonable rules and regulations as the library board may find necessary to adopt and publish in order to render the use of the library and reading room of the greatest benefit to the greatest number; and

they may exclude and cut off from the use of said library and reading room any and all persons who shall wilfully violate such rules.

1901, 6th Ses. p. 5, Sec. 5.

Section 999. Report of Board of Directors: The said board of directors shall make an annual itemized report to the state library commission on June 30th of each year, stating the condition of their trust, the various sums of money received from the library fund and from all sources and how much has been expended, the number of books and periodicals on hand, and the number added by purchase, gift or otherwise during the year, the number lost or missing, the number of books loaned out and the general kind and character of such books, with other statistics, information and suggestions as they may deem of general interest and the state library commission may require

1901, 6th Ses. p. 5, Sec. 6.

Section 1000. Donations, Title to Vest in Directors: All persons desirous of making donations, of money, personal property or real estate for the benefit of such library shall have the right to vest the title to the same in the board of directors created under this sub-division, to be held and controlled by said board, when accepted according to the terms of the deed of gift, devise or bequest of such property; and as to such property, the said board shall be held and considered to be the special trustees.

1901, 6th Ses. p. 5, Sec. 7.

Section 1001. Council May Levy Tax for Support of Library: In case a free subscription library has been established in any city or incorporated village, and duly incorporated and organized, the council may levy a tax for its support as provided in this sub-division, without change in the organization of such library association: *Provided*, It becomes a free library, and the sums so raised shall be duly paid to the officer duly authorized to receive the same, and shall be under the control of said library association: *Provided*, That if at any time the said library association ceases to exist, or from any reason fails to provide a free circulating library as required by the provisions of this sub-division, the books and other property accumulated from the proceeds of the levy herein authorized shall become the property of the city or village and be subject to the control of the council as herein provided. In this sub-division, unless the context otherwise requires, "library" includes libraries with branches, loans, reference, traveling and reading room departments, lectures and museums; "City" includes towns and villages; "Council" means the legislative body of an incorporated city, town or village; "Mayor" means the chief executive officer of an incorporated city, town or village.

1901, 6th Ses. p. 5, Sec. 8.

FREE TRAVELING LIBRARIES.

Section 1002. Commission, Powers and Duties, Report: The state traveling library commission shall give advice and

counsel to all free libraries and to all public school libraries in the state, and to all communities which may propose to establish them, as to the best means of establishing and administering such libraries, the selection of books, cataloging, and other details of library management.

The commission may also send its members to aid in organizing new libraries or in improving those already established. They shall have the management of the traveling library department of the state, shall make such rules for the government of such department and the use of the books and other property thereof as they may deem necessary and under such regulations as they may prescribe.

Such books when so sent out to any library, community or organization shall be there kept for the use of the public, subject to such reasonable regulations and reference thereto as may be adopted by said commission. And said commission shall from time to time so send out and distribute such books throughout the state, and at suitable intervals change such distribution in such manner as to secure to the greatest practicable degree the use and enjoyment of such books to the people of the entire state. The commission shall make an annual report to the governor, one thousand copies of which shall be published as other official reports are published.

1901, 6th Ses. p. 6, Sec. 2.

Section 1003. Donations of Money or Property:

All persons desirous of making donations of money, personal property, or real estate for the benefit of such traveling library, shall have the right to vest the title of the same in the commission created under the law, to be held and controlled by said commission when accepted according to the terms of the deed or gift, devise or bequest of such property, and as to such property, the said commission shall be held and considered to be the special trustees.

1901, 6th Ses. p. 7, Sec. 3.

Section 1004. Commission, Reports from Public Libraries: The commission shall each year obtain from all free public libraries and all public school libraries, reports showing the condition, growth, development and manner of conducting said libraries, and shall obtain reports from other libraries in the state at their discretion, and shall furnish annually to the secretary of state such information for publication as may be deemed of public interest.

1901, 6th Ses. p. 7, Sec. 4.

Section 1005. Secretary, Duties and Salary: Said commission shall elect a secretary who shall serve at the will of the commission and for such compensation and under such conditions as it shall determine. It shall be the duty of said secretary to keep a record of all the proceedings of the commission, to keep accurate accounts of its financial transactions, to change all traveling libraries, to act under the direction of the commission in organizing new libraries, and improving those already established, and in general to perform such other duties as may be assigned by the commission. In addition to the salary the secretary shall be allowed necessary traveling expenses while absent from the office in the service of the commission, the same to

be certified and paid in the same manner as other expenses incurred by the commission, and any balance not expended in any year may be added to the expense of the ensuing year.

Said commission shall have its office in the state capital.

1901, 6th Ses. p. 7, Sec. 5.

Section 1006. Commission, Expenses of: No member of the commission, except the secretary, shall ever receive any compensation for services as a member, but the traveling expenses of members in attending meetings of the commission, or in visiting or establishing libraries, and other incidental and necessary expenses connected with the work of the commission shall be paid, including compensation and expenses of the secretary mentioned in the preceding section: *Providing*, That the whole amount of said expenses, including the secretary's salary, shall not exceed the sum of fifteen hundred (\$1,500) dollars, in any year.

1901, 6th Ses. p. 8, Sec. 6.

CHAPTER XXXIV.

STATE BOARD OF EDUCATION—ITS DUTIES.

Section.

1007. Meetings. Rules and regulations.

1008. Public examinations of teachers.

1009. State certificates and diplomas.

Section.

1010. Diplomas from state institutions.

1011. Revocation of certificates and diplomas.

Section 1007. Meetings, Rules and Regulations: The board of public instruction shall meet at the capital on the first Monday of June and December of each year, for the transaction of business, and at such other times as its president shall direct; and shall have power to adopt rules and regulations, not inconsistent with the laws of this state for its own government.

1899, 5th Ses. p. 85, Sec. 2; 1893, 2d Ses. p. 187, Sec. 2.

Board, how constituted: Const. Art. IX, Sec. 2; also Sec. 369 of this Code.

Section 1008. Public Examination of Teachers: The state board shall hold annually, at least two public examinations of teachers at each of which examinations one member of the board shall preside, assisted by such person or persons not to exceed two in number, as the board may select, who shall receive for such services not to exceed five dollars per day, and said board shall keep a full and correct record of its proceedings, and a complete register of all persons to whom certificates are issued.

1899, 5th Ses. p. 85, Sec. 3; 1893, 2d Ses. p. 187, Sec. 3.

Section 1009. State Certificates and Diplomas: Said board shall issue state certificates and state diplomas to those persons only, who possess good moral character and who shall have passed a thorough examination in all the branches included in the course of study prescribed for the public schools of the state, didactics and such other branches as the board may direct: *Provided*, That in no case shall a state certificate be granted unless the applicant has been successfully engaged in teaching for at least three years and can furnish the board satisfactory evidence of his or her ability to instruct and properly manage any school in the state. Such

certificate shall authorize the person to whom it is issued, to teach in any public school in the state for a term of five years from the date of its issue, unless sooner revoked by the state board of public instruction: and *Provided further*, That in no case shall a state diploma be granted, unless the applicant has been successfully engaged in teaching for the term of at least five years, two of which shall have been in the State of Idaho, and can furnish the board satisfactory evidence of his ability to instruct and properly manage any public school in the state. Such diploma shall authorize the person to whom it is issued, to teach in any public school of the state during the lifetime of the holder, unless revoked by the state board of public instruction: *Provided*, The board may issue certificate to persons holding state diplomas or state certificates from other states requiring similar qualifications.

1899, 5th Ses. p. 86, Sec. 4; 1893, 2d Ses. p. 187, Sec. 4.

State superintendent to prepare course of study: Sec. 1013.

Section 1010. Diplomas from State Institutions: The following diplomas shall be considered equivalent to the teaching experience required by the preceding section:

Diplomas from any chartered institutions of this state, of collegiate grade, granted upon a completion of a course of at least five years' work above the eighth grade of the public school system of this state, on the basis of thirty recitations per week and forty weeks per year, the state board of education being the judge of the standard of such schools: *Provided*, That this section shall not be so construed as to permit the issuance of any state certificate without an examination by the state board of public instruction: *Provided further*, That no certificate shall be issued under the provisions of this section to any person who is not eighteen years of age.

1901, 6th Ses. p. 30, Secs. 1 and 2.

Section 1011. Revocation of Certificates and Diplomas: The state board of public instruction shall have the power to revoke any state certificate or state diploma, for any cause of disqualification, which would have been sufficient ground for refusing to issue the same, had the cause existed or been known, at the time of its issue. *Provided*, That before revoking any such certificate or diploma, the holder thereof, shall have at least thirty days' notice to appear before the state board and show cause why such revocation should not be made.

1899, 5th Ses. p. 86, Sec. 5; 1893, 2d Ses. p. 188, Sec. 5.

CHAPTER XXXV.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION.

Section.

1012. Office and seal. Records.

1013. General supervision of schools.

1014. Shall prepare examination questions.

Section.

1015. Duties regarding institutes.

1016. Meeting with county superintendents.

1017. Duties generally.

Section 1012. Office and Seal. Records: The state superintendent of public instruction shall have an office at the capital, where a seal shall be kept which shall be the official seal of the state superin-

tendent of public instruction, by which all of his official acts may be authenticated, and all records, books, and papers appertaining to the business of this office. He shall file all papers, reports and public documents transmitted to him by the county superintendents of the several counties and hold the same in readiness to be exhibited to the governor, or to any committee of any house of the legislature, or any citizen of the state.

1899, 5th Ses. p. 86, Sec. 7; 1893, 2d Ses. p. 188, Sec. 7.

Section 1013. General Supervision of Schools: He shall have general supervision of all the county superintendents and of the public schools of the state, and shall prepare and prescribe a course of study for use in all such public schools.

1899, 5th Ses. p. 86, Sec. 8; 1893, 2d Ses. p. 189, Sec. 8.

Section 1014. Shall Prepare Examination Questions: He shall prepare or cause to be prepared all examination questions to be used by the county superintendents of the several counties of the state in the examination of applicants for teachers' certificates, and shall prescribe the rules and regulations for the conducting of all such examinations.

1899, 5th Ses. p. 87, Sec. 9; 1893, 2d Ses. p. 189, Sec. 9.

Section 1015. Duties Regarding Institutes: He shall prescribe rules and regulations for the holding of teachers' institutes, and after consulting and advising with county superintendents, shall appoint assistant conductors therefor, when deemed necessary; and shall, as far as he shall find practicable, attend and assist at such institutes and aid and encourage generally, teachers in qualifying themselves for their duties.

1899, 5th Ses. p. 87, Sec. 10; 1893, 2d Ses. p. 189, Sec. 10.

Section 1016. Meeting with County Superintendents: He shall meet the county superintendents of each judicial district, or of two or more districts combined, at such time and place as he shall appoint, giving them due notice of such meeting. The object of such meeting shall be to accumulate facts relative to schools, to compare views, to discuss principles, to hear discussions and suggestions appertaining to the examination and qualification of teachers, methods of instruction, institutes and all other matters embraced in the public school system.

1899, 5th Ses. p. 87, Sec. 11; 1893, 2d Ses. p. 189, Sec. 11.

Section 1017. Duties Generally: He shall prepare, have printed and furnished, through the county superintendents, to all officers charged with the administration of the laws relating to the public schools, and to teachers, such blank forms and books as are needed or required to be used in the discharge of their duties. He shall have the law relating to the public schools printed in pamphlet form and shall supply school officers, school libraries and state librarians with one copy each of such pamphlets; said printing to be paid for on the warrant of the auditor out of the general fund on

bills approved by the state board of examiners, and he shall on or before the first day of December in every year preceding that in which shall be held a regular session of the legislature, report to the governor the condition of the public schools, the amount of state school fund apportioned and sources from which derived, with such suggestions and recommendations relating to the affairs of his office as he may think proper. It shall be his duty to visit annually such counties of the state as most need his personal attendance, and all counties, if practicable, for the purpose of inspecting the schools, awakening and guiding public sentiment in relation to the practical interests of education. And he shall open such correspondence as may enable him to obtain all necessary information relating to the system of public schools in other states; and he shall receive out of the state treasury for actual traveling expenses and other expenses while traveling on the business of the department, not exceeding seven hundred and fifty dollars per annum, for which he shall render an itemized bill to the state board of examiners; and all office fuel, furniture, books, postage, stationery and other contingent expenses pertaining to his office, shall be furnished in the same manner as those of the other departments of the state government.

1899, 5th Ses. p. 87, Sec. 12; 1893, 2d Ses. p. 189, Sec. 12.

CHAPTER XXXVI.

COUNTY SUPERINTENDENTS.

Section.

ELECTION, QUALIFICATIONS AND RESIDENCE

1018. Election. Term of office.
 1019. Oath of office. Bond. Eligibility.
 1020. Office at county seat. Furnishings. Office days.
 1021. May appoint deputy.
DUTIES IN RELATION TO SCHOOLS AND DISTRICTS.
 1022. Must visit schools.
 1023. May require trustees to make repairs, etc.
 1024. Records.
 1025. District boundaries.

Section.

1026. Appoint trustees, when.
EXAMINATIONS AND CERTIFICATES.
 1027. Regular and special examinations.
 1028. Certificates, to whom granted.
 1029. Three grades of certificates.
 1030. Revocation of certificates.
 1031. Record of certificates.
 1032. Expenses of examination.
ANNUAL REPORT.
 1033. Made to state superintendent. Contents.
 1034. Penalty for failure to make full report.

ELECTION, QUALIFICATION AND RESIDENCE.

Section 1018. Election, Term of Office: At each general election, there shall be elected in each county in the State of Idaho, a superintendent of public instruction, who shall reside at the county seat of the county in which he is elected, and who shall hold his office for a term of two years, from and after his taking charge of the same and until his successor has been elected and qualified.

1899, 5th Ses. p. 306, Sec. 1; 1897, 4th Ses. p. 79, Sec. 1.

General election: Sec. 770.

Salary, how fixed: Sec. 1764.

WHO ENTITLED TO VOTE FOR:

The county superintendent of schools

being a constitutional officer, only those voters recognized by the constitution can vote at his election.—People ex rel Ahrens v. English (Ill.), 15 L. R. A. 131.

Section 1019. Oath of Office; Bond; Eligibility: Before entering upon the duties of his office the county superintendent

of public instruction shall take and subscribe the oath prescribed by law and execute a bond, payable to the State of Idaho, with two or more sureties to be approved by the board of county commissioners, in the penal sum of not less than two thousand dollars, conditioned upon the faithful performance of his official duties, and the delivery of all moneys and property received by him as such superintendent to his successor in office, which official bond together with his official oath, shall be filed in the office of the county recorder, not later than the second Monday in January, next after election; *Provided*, That no person shall be eligible to the office of county superintendent of public instruction except a practical teacher of not less than two years experience and the holder of a valid first grade certificate, at the time of his election or appointment.

1899, 5th Ses. p. 307, Sec. 2; 1897, 4th Ses. p. 79, Sec. 2.

Section 1020. Office at County Seat. Furnishings.

Office Days: The county commissioners shall furnish the county superintendent of public instruction an office at the county seat, and they shall furnish him with all necessary office furniture, including seal and blank books, stationery, postage, expressage, all blanks necessary for his office, and all blank books and blanks necessary for the use of the trustees and teachers in the discharge of their respective official duties within his county. The county superintendent of public instruction shall designate certain days in each month as his office days, which shall not be less than five in any month, and upon these days so designated by him, he shall keep his office open from 9 o'clock a. m. until 5 o'clock p. m.

1899, 5th Ses. p. 307, Sec. 4; 1897, 4th Ses. p. 80, Sec. 4.

Section 1021. May Appoint Deputy: If for any cause the county superintendent is unable to attend to the duties of his office, he shall appoint a deputy, who shall take the usual oath of office and who may exercise all the functions of the county superintendent, but such deputy shall receive no salary from the public fund.

1899, 5th Ses. p. 90, Sec. 25.

DUTIES IN RELATION TO SCHOOLS AND DISTRICTS.

Section 1022. Must Visit Schools: The county superintendent of public instruction shall have charge and oversight of the public schools of his county, and it shall be his duty to visit every public school in his county at least once during each term and remain at said public school at least one-half day; at such visits he shall carefully observe the methods employed by the teacher in giving instruction in the several branches taught; the manner of discipline and government, the classification of the pupils, and general management of the school, and shall give the school such instruction and encouragement as he deems for the best interests of all concerned, and he shall make such suggestions to the teacher in pri-

vate as, in his judgment, will render the said teacher more efficient, and promote the general educational interests of the district.

1899, 5th Ses. p. 307, Sec. 3; 1897, 4th 2d Ses. p. 190, Sec. 14, re-enacted 5th Ses. p. 80, Sec. 3, amending act of 1893, Ses. p. 88.

Section 1023. May Require Trustees to Make Repairs, Etc.: He may, in his discretion, require the trustees of any district to repair the school buildings or property, or to abate any nuisance in or about the premises, if such repair or abatement can be done for a sum not to exceed seventy-five dollars; *Provided*, There is a sufficient amount of money in the treasury to the credit of the district. He may also in all cases, require the trustees to provide suitable out-houses; and in case the trustees fail to make such provision within a reasonable time, he may cause it to be done and draw an order for a warrant, as herinafter provided, upon the county auditor for said expenses, who shall draw his warrant payable out of any money to the credit of such district.

1899, 5th Ses. p. 307, Sec. 5; 1897, 4th Sec. 15, re-enacted 5th Ses. p. 88. Ses. p. 81, Sec. 5; 1893, 2d Ses. p. 191,

Section 1024. Records: He shall keep a complete record of all his official acts; preserve all blanks, maps, charts and apparatus, sent him as such officer, and file all papers, reports, and statements from teachers and school boards; keep a register of all the teachers employed in his county, giving name of teacher, number of district, salary per month, grade of certificate and date of superintendent's visit. He shall obey the legal instructions of the state superintendent.

1899, 5th Ses. p. 307, Sec. 6; 1897, 4th 2d Ses. p. 191, Sec. 16, re-enacted 5th Ses. p. 81, Sec. 6, amending act of 1893, Ses. p. 88.

Section 1025. District Boundaries: He shall inquire and ascertain whether the boundaries of the school districts in his county are definitely and plainly described in the records of the clerk of the board of county commissioners, and keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting or incorrectly described, he shall report such fact to the board of county commissioners at their regular meeting in July, and such board shall immediately take such steps as are necessary to change, harmonize and clearly define them. The county superintendent, if he deem it necessary for the guidance of school census marshals, may order the description of the district boundaries printed in pamphlet form, to be paid out of the current expense fund of the county.

1899, 5th Ses. p. 309, last part of Sec. Ses. p. 193, portion of Sec. 22, re-enacted 5th Ses. p. 90. 12; 1897, 4th Ses. p. 83, Sec. 12; 1893, 2d

Section 1026. Appoint Trustees, When: The county superintendent shall appoint trustees for all newly organized school districts who shall serve until the next regular election, fill all vacancies that may occur in the board of trustees by reason of death, resignation or otherwise, and such appointments shall hold until the next regular election.

1899, 5th Ses. p. 309, Sec. 13; 1897, 4th Sec. 23, re-enacted 5th Ses. p. 90.
Ses. p. 84, Sec. 13; 1893, 2d Ses. p. 194,

EXAMINATIONS AND CERTIFICATES.

Section 1027. Regular and Special Examinations:

He shall hold one regular public examination in each year for the purpose of examining all persons who may offer themselves as teachers in the public schools; said examination to be held in some suitable room at the county seat, and commencing on the fourth Thursday of August and continuing not to exceed three days. And for a like purpose the said county superintendent shall hold not to exceed three special examinations at such times and places, as in his judgment the interests of the schools and teachers of the county shall require; *Provided*, That it shall be the duty of the county superintendent to give at least fifteen days notice of such regular and special public examinations in some newspaper published in the county.

1899 5th Ses. p. 308, Sec. 7; 1897, 4th Ses. p. 191, Sec. 17, reenacted 5th Ses. p. 81, Sec. 7, amending act 1893, 2d p. 88.

Section 1028. Certificates, to Whom Granted:

The county superintendent shall grant certificates in such form as the state superintendent shall prescribe to those persons only who shall have attained the age of eighteen years, who have attended the said public examination and shall be found to possess good and moral character, thorough scholarship, and ability to govern and instruct the school, but no certificate shall be granted to any person except to applicants for primary certificates, who shall not pass a satisfactory examination in orthography, reading, writing, grammar, arithmetic, geography, history of the United States, civil government, physiology, and hygiene, with particular reference to the effects of alcoholic drinks, stimulants and narcotics upon the human system, theory and practice of teaching, state constitution and so much of the general school laws as relates to the duties and responsibilities of teaching. Said certificates shall be signed by the county superintendent and associate examiner or examiners, and no person shall be considered a qualified teacher within the meaning of the law, who has not a certificate granted by the said superintendent or other lawful authority: *Provided*, That all examination questions shall have been prepared as prescribed by law, furnished under the seal and opened before the applicants for certificates on the day of examination: *Provided*, That first grade certificates shall be granted to all applicants who are otherwise qualified by law and who shall have passed in all the branches required in this section, and algebra, general history and rhetoric in addition thereto, with a general average of not less than ninety per cent, and with a minimum of not less than seventy-five per cent in any branch; and all applicants who are otherwise qualified according to law shall be granted second grade certificates, who shall have attained an average of eighty per cent and a minimum of not less than seventy per cent; the third grade certificates shall be granted to all applicants

who are otherwise qualified according to law, and who shall have attained a general average of seventy-five per cent and a minimum in any branch of not less than sixty per cent, but the holder of such shall be ineligible to another certificate of the same grade: *Provided*, That teachers holding valid second grade certificates with an average of ninety per cent or above may take the additional branches and receive a first grade certificate, and the county superintendent may renew first grade certificates at their expiration so long as the teacher is actually engaged in teaching: *Provided*, That primary certificates shall be granted to be good only in primary departments of graded schools, and which includes the first four grades, and that examination for such certificates shall be upon questions prepared by the state superintendent of public instruction: *Provided*, That each applicant for teacher's certificate, under the provisions of this chapter, shall pay to the county superintendent the sum of one dollar, the same to be deposited by him in the county treasury to the credit of the institute fund, to be used in the institute work in addition to the regular appropriation.

1901, 6th Ses. p. 217.

Section 1029. Four Grades of Certificates: The certificates issued by the county superintendent, subject to the rules and regulations prescribed by the state superintendent, shall be of four grades, valid in the counties in which they are issued for the term hereinafter specified, unless sooner revoked:

- (1) First grade, five years from the date thereof.
- (2) Second grade, three years from the date thereof.
- (3) Primary grade, four years from the date thereof.
- (4) Third grade, one year from the date thereof: *Provided*, That first grade, second grade and primary grade certificates shall be good in any county in the state for the same period by the holder thereof filing a certified copy of the same with the county superintendent in the county in which he desires to teach.

1901, 6th Ses. p. 219.

Section 1030. Revocation of Certificates: The county superintendent of public instruction shall have power to revoke any teacher's certificate, other than those granted by the state board of public instruction for neglect of duty, for incompetency to instruct and govern a school, for immorality, or for any cause of disqualification which would have been sufficient ground for refusing to issue the same had the cause existed or been known at the time of its issue. *Provided*, That no certificate shall be revoked or annulled without a personal hearing, unless the holder thereof shall after reasonable notice, neglect or refuse to appear before the superintendent for that purpose..

1899, 5th Ses. p. 309, Sec. 10; 1897, 4th Ses. p. 83, Sec. 10; 1893, 2d Ses. p. 193, Sec. 20, re-enacted 5th Ses. p. 89.

Certificates by state board of public instruction: Sec. 1009.

Section 1031. Record of Certificates: He shall keep a record of all certificates granted or revoked, showing to whom issued, age of grantee, date of issue, grade and duration of each certificate, and if revoked, date and reason therefor.

1899, 5th Ses. p. 309, Sec. 11; 1897, 4th Sec. 21, re-enacted 5th Ses. p. 89.
Ses. p. 83, Sec. 11; 1893, 2d Ses. p. 193,

Section 1032. Expenses of Examination: The county superintendent shall be allowed all necessary expenses incurred in the examination of teachers, for blanks, books, stationery, pens and ink, out of the current expense fund of the county.

1899, 5th Ses. p. 309, Sec. 14; 1897, 4th Ses. p. 84, Sec. 14.

ANNUAL REPORT.

Section 1033. Made to State Superintendent, Contents: He shall, on or before the first day of October in each year, make and transmit an annual report to the state superintendent for the school year ending August 31st, next preceding, which report shall contain an abstract of all reports made to him by the district clerks of the several districts of the county, together with such statistics, items and statements, relative to the schools of the county, as may be required and prescribed by the state superintendent. Such reports shall be made upon and conform to the blanks furnished by the state superintendent for that purpose.

1899, 5th Ses. p. 309, first part of Sec. 5th Ses. p. 90.
12; 1897, 4th Ses. p. 83, Sec. 12; 1893, 2d State superintendent to furnish
Ses. p. 193, portion of Sec. 22, re-enacted blanks: Sec. 1017.

Section 1034. Penalty for Failure to Make Full Report: If the county superintendent fails to make a full and correct report to the state superintendent of public instruction of all statements required by law to be made, he forfeits the sum of one hundred dollars from any moneys due him from the county, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid upon information from the state superintendent of public instruction, that such reports have not been made.

1899, 5th Ses. p. 310, Sec. 16; 1897, 4th Ses. p. 85, Sec. 16.

CHAPTER XXXVII.

PUBLIC SCHOOL FUND.

Section.

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- 1035. Proceeds of state lands, etc.
- 1036. Taxes and fines.
- 1037. Per cent. of licenses. Division in towns.

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- 1038. Semi-annual distribution per capita.

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- 1039. Distribution by county superintendent.
- 1040. County treasurer custodian of money. Forfeited money.
- PAYMENT OF FUNDS BY DISTRICT OFFICERS.
- 1041. County superintendent's record of funds.
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1043. Submission to vote. Qualified electors.

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1045. Investment in bonds or warrants.

DISTRICT BONDS, HOW ISSUED AND PAID.

1046. Submission to electors. Purpose.

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1047. Manner of holding election. Bonds, how signed.

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1049. Faith of district pledged. District a body corporate.

1050. Annual tax. Investment of surplus.

1051. Payment of bonds.

1052. Payment of interest.

1053. Printing of bonds.

WHAT CONSTITUTES.

Section 1035. Proceeds of State Lands, Etc.: The public school fund of the state shall consist of the proceeds of such lands as have hitherto been granted, or may hereafter be granted, to the state by the general government known as "school lands" and those granted in lieu of such. Lands acquired by gift or grant from any person or corporation under any law or grant, and of all other grants of land or money made to the state for general educational purposes, and all moneys accruing to the state from the estates of deceased persons.

1899, 5th Ses. p. 91, Sec. 27; 1893, 2d Ses. p. 195, Sec. 26.

Lands granted: Idaho admission bill, Sec. 4.

Funds granted: Idaho admission bill, Sec. 7.

Lands acquired by forfeiture, etc.: Sec. 479.

Money from estates: Civil Code, Sec. 2554.

Investment of funds by state: Sec. 467 et seq.

LEGISLATURE CANNOT DIVERT SCHOOL FUND: As Section 3, Article 9 of the state constitution declares that the permanent school fund shall forever remain inviolate and intact, and all interest thereon shall be expended

in the maintenance of the schools of the state, the legislature is prohibited from enacting any law that would directly or indirectly divert either principal or interest to any other purpose.—State v. Fitzpatrick (Idaho), 51 Pac. 112.

POWER OF THE STATE LAND BOARD TO BIND THE STATE: The state board of land commissioners has power to make legal contracts in loaning the school fund, but cannot bind the state beyond the authority given them by law, and the unauthorized acts of said board do not work a forfeiture or impose a penalty directly or indirectly upon the state.—State v. Fitzpatrick (Idaho), 51 Pac. 112.

Section 1036. Taxes and Fines: For the purpose of establishing and maintaining public schools in the several counties of the state, the board of county commissioners of each county shall, at the time of levying the taxes for the state and county purposes, levy a tax of not less than five mills nor more than ten mills on each dollar of taxable property, in their respective counties, for school purposes. Said taxes must be assessed and collected in each county as other taxes for state and county purposes. For the further support of the public schools there shall be set apart by the county treasurer of each county and placed in the county school fund all moneys arising from fines, forfeitures or breaches, of any of the public penal laws of the state.

1899, 5th Ses. p. 91, Sec. 28; 1893, 2d Ses. p. 195, Sec. 28.

Levy of county taxes: Sec. 1314.

TAX COLLECTOR NOT ENTITLED TO COMMISSION: Tax collectors are

not entitled to commissions on school money collected under the general county levy.—Fremont County v. Brandon (Idaho), 56 Pac. 264.

Section 1037. Per Cent. of Licenses. Division in Towns: Fifty per cent of all moneys paid for licenses shall be applied to and constitute a part of the school fund of the school district in which such licenses are collected: *Provided*, That in any city, town or village where there are two or more school districts, all moneys collected for licenses in such city, town or village, and by law directed to be a part of the school fund, shall be divided between such districts in the proportion of the school children in such respective districts as shown by the last preceding census.

1899, 5th Ses. p. 242, part of Sec. 1, Sec. 1640.
and p. 253, Sec. 1; 1895, 3d Ses. p. 37, Distribution of license money: Sec.
Sec. 1, amending laws of 1887, R. S. 1490.

DISTRIBUTION OF FUNDS.

Section 1038. Semi-Annual Distribution per Capita: The income of the state school fund and taxes collected by the state for the support of the public schools which shall be received up to the first day of January and the first day of July of each year shall be distributed semi-annually during said months respectively in each year among the several counties of the state from which reports have been received by the state superintendent of public instruction, as provided in this title, in proportion to the number of children of school age, as shown by the last school census list of each county, and the superintendent of public instruction shall certify such apportionment to the state auditor, and upon such certificate the auditor shall draw his warrant in favor of the county treasurer of each county, for the amount due such county. The superintendent shall also certify to the treasurer and superintendent of each county the amount apportioned to each county.

1899, 5th Ses. p. 91, Sec. 29; 1893, 2d Ses. p. 195, Sec. 29.

Section 1039. Distribution by County Superintendent: The county superintendent shall require of the county treasurer, quarterly each year, a report of the amount of money on hand to the credit of the school fund of each county, not already apportioned, and the county treasurer shall furnish such report when so required. The county superintendent, upon receiving such report, shall proceed to apportion the public school moneys, both county and state, reported by the county treasurer to be in the county treasury, among the several school districts in the following manner, to-wit: One-third of the whole amount he shall divide equally among the several districts that have complied with the provisions of this title. The remaining two-thirds of said whole amount he shall apportion per capita among the several districts in proportion to the number of children in each district, as shown by the last report of the census marshal of each district, and he shall credit each district with the amount to which apportionment entitles it: *Provided*, That each district is entitled to one share in the apportionment of the first one-

third, regardless of the number of children therein. Immediately after such apportionment he shall certify to the county treasurer the amounts which are to be placed to the credit of each district, and notify the clerk of each district of the amount placed to the credit of his district.

1899, 5th Ses. p. 91, Sec. 30; 1893, 2d Ses. p. 196, Sec. 30.

Section 1040. County Treasurer Custodian of Money. Forfeited Money: It is hereby made the duty of the county treasurer of each county to keep a separate account with each school district in the county; place to the credit of each the amount of money certified to by the county superintendent, as provided in this chapter, and to pay over the money on legally drawn warrants or orders of the district officers entitled to draw the same: *Provided*, That it shall be the duty of the county superintendent whenever any board of trustees fails to fully comply with the provisions of this chapter, or any subsequent law, to notify the county treasurer in writing that there has been a failure upon the part of such board of trustees to comply with the law. Whereupon it shall be the duty of the county treasurer to withhold all moneys apportioned to the district governed by said board of trustees until he shall have received notice from the county superintendent that the board governing said district has fully complied with the law. All moneys that shall be finally forfeited by any district shall be put into the general school fund of the county and be apportioned as other moneys. And it shall be the duty of said treasurer to receive and hold, as special deposits, all moneys belonging to the public school fund of his county in accordance with the provisions of this chapter, and to pay them over only on warrants of the county auditor: *Provided, further*, That the said county treasurer shall pay over to the county treasurer of any independent school district organized under the provisions of this chapter, all moneys belonging to such district, upon the presentation of an order from the clerk of the board of trustees of such district, signed also by the chairman thereof, and countersigned by the county superintendent and county auditor.

1901, 6th Ses. p. 225.

PAYMENT OF FUNDS BY DISTRICT OFFICERS.

Section 1041. County Superintendent's Record of Funds: It shall be the duty of the county superintendent in each county to keep a separate account with each school district in his county; to place to the credit of each district the amount apportioned by him; to countersign all legally-drawn warrants and orders of the district officers entitled to draw the same; to enter the same upon his books in proper form, giving date, number of such warrant, or order, to whom drawn, for what purpose, and the amount of the same. And further, it shall be the duty of the county superintendent to collect by process of law all penal fines not paid over by the justices of the peace, or other officers required by law to pay the same into the county treasury; and the same may be collected and

recovered by action at law, in which the State of Idaho, by the county superintendent, is plaintiff and the officer neglecting or refusing to pay over said moneys is defendant.

1899, 5th Ses. p. 92, Sec. 32; 1893, 2d Ses. p. 197, Sec. 32.

Section 1042. Warrants by County Auditor: It shall be the duty of the county auditor upon the presentation of any order from the clerk of the board of trustees of any school district in his county, said order also being signed by the chairman of the said board of trustees or in his absence, by the other member of the board, to draw his warrant upon the school fund standing to the credit of the said district in favor of the person mentioned in the said order: *Provided*, That in case of independent school district orders, he shall not draw his warrant, but countersign the warrant or order of said district officers: *Provided further*, That the said orders have been countersigned by the county superintendent, but in no case shall he issue a warrant, or countersign an order for a greater amount than there is cash in the treasury to the credit of said district.

1899, 5th Ses. p. 92, Sec. 33; 1897, 4th Ses. p. 12, Sec. 2, amending laws of 1893, 2d Ses. p. 197, Sec. 33.

ORDER FOR WARRANT VOID. WHEN: An order for a warrant by two of the trustees of a school dis-

trict, one of whom is personally interested in it, is void for want of the sanction of a competent majority of the board of trustees. — *Shakespear v. Smith*, 77 Cal. 638 11 Am. St. Rep. 327, 20 Pac. 294.

SPECIAL TAX.

Section 1043. Submission to Vote. Qualified Electors: It shall be lawful at the annual school meeting and election on the first Monday in June to vote upon the question of whether or not any special tax shall be levied for any purpose, such as building and repairing school houses, or for the support of public schools in the district; said meeting may first decide the rate to be levied, not to exceed ten mills on the dollar of taxable property, then to proceed to ballot, on which ballot shall be written or printed "Tax—Yes" or "Tax—No" and none but actual resident freeholders and heads of families of said districts shall vote at such election. A separate ballot box shall be used for voting on any question of taxation or other business concerning schools and school interests, from that used in voting for trustees. It shall be the duty of the judge and clerk of said election to prepare in duplicate an abstract of the vote at such election, showing the number of votes cast for trustee, and the number of votes cast for and against the proposition voted for, to file one of said abstracts with the clerk of the district and the other with the clerk of the board of county commissioners. If a majority of the votes polled at such election are in favor of the tax, the board of trustees must immediately make such levy and certify the fact, the date thereof, and the rate of tax levied, the year for which levied and the number of the district, to the clerk of the board of county commissioners, but not more than one special tax can be levied in one year.

1901, 6th Ses. p. 224, last part of Sec. 42.

TAXATION BY SCHOOL DISTRICTS, VALIDITY OF LEVY, STRICT COMPLIANCE WITH STATUTE: Where the statute provides for the levying of a special tax by a school district and prescribes the manner in which such levy must be made, a literal compliance with the requirements of the statute is necessary to the validity of the tax.—*Bramwell v. Guheen*, 2 Idaho, 1069, 29 Pac. 110; *Mercur Gold M. & M. Co. v. Spry* (Utah), 52 Pac. 382. The legislature cannot impose a tax upon the property of inhabitants of a school district, nor can it prescribe a procedure by which such tax is to be levied that takes from the inhabitants or local authorities of such district all discretion in regard thereto.—*McCabe v. Carpenter*, 102 Cal. 469; 36 Pac. 836. A special tax for school

purposes can only be levied after the question has been submitted to the qualified electors of the district in the manner pointed out by the statute.—*People v. Castro*, 39 Cal. 65. And the electors cannot authorize the board to contract a debt on behalf of the district or to levy a tax beyond the amount limited by statute, nor can they ratify a contract made by the board in excess of the powers conferred.—*Nevil v. Clifford*, 63 Wis. 435; 24 N. W. 65. The authority of the trustees to levy a tax in a school district for the erection of a school house, is not only limited to the amount voted by the district, but is to be levied only upon the property within the district voting the same.—*Hughes v. Ewing*, 93 Cal. 414; 28 Pac. 1067.

Section 1044. Assessment and Collection of Special Taxes: Upon receiving such statement from the trustees of any school district, the assessor must assess upon all property in the district subject to taxation, the tax so levied and certified to him as aforesaid; but for that purpose he is not required to take new statements from the owners of property, but his assessment of all special taxes so levied may be computed and made upon the valuation of property as fixed by the board of equalization for state and county purposes, and as appears upon the assessment roll in the same year; said special taxes so levied as aforesaid shall become a lien upon the property so assessed from the date of assessment, and shall be due and payable at the same time as state and county taxes, and in all respects are to be collected, in the same way, except that the assessor must keep a separate list or assessment roll thereof, and when paid must name them in his receipt to the taxpayer as a separate item, and he must pay them to the county treasurer as he pays other taxes; but at the time of payment he must specify to the treasurer what taxes they are, and take a separate receipt therefor and keep separate accounts thereof.

The board of county commisisoners shall furnish the assessor with such blanks as are needed to comply with the provisions hereof. The provision of this title for the levy and collection of taxes shall not apply to independent districts now established, which have special laws for the collection of school taxes.

1899, 5th Ses. p. 95, Sec. 43; 1893, 2d Ses. p. 202, Sec. 43.

DISPOSITION OF SURPLUS.

Section 1045. Investment in Bonds or Warrants: Whenever there shall have accumulated in the hands of the treasurer, moneys belonging to any school district to an amount in excess of the amount which, in the opinion of the school district board of said district, shall be necessary for the current expenses of maintaining the schools in said district, the same shall be invested by said

board in United State bonds, state bonds, state warrants or county warrants when the market value thereof is not below par. And said board shall deposit said securities in some safe deposit, and they shall there be kept until it shall become necessary to convert the same into money for school district purposes, to be determined by said board.

1899, 5th Ses. p. 106, Sec. 86; 1891, 1st Ses. p. 186, Sec. 1.

DISTRICT BONDS, HOW ISSUED AND PAID.

Section 1046. Submission to Electors. Purpose: The board of school trustees of any school district may, whenever a majority so decide, submit to the qualified electors of the State of Idaho, who are resident freeholders or householders of the district, and their wives, the question whether the board be authorized to issue coupon bonds to a certain amount not to exceed four per centum of the taxable property in said district, and bearing a certain rate of interest not exceeding six per centum per annum, and payable and redeemable at a certain time for the purpose of building or providing a school house in said district with all necessary furniture, such as desks, blackboards, globes, charts, outline maps, etc., and the board of school trustees of any school district which has issued bonds for any of the purposes enumerated in this section, may submit to the electors of such district the question whether the board shall be authorized to issue coupon bonds to refund or take up any of the bonded indebtedness of such district, at a rate of interest not exceeding six per centum per annum.

1901, 6th Ses. p. 12.

CALLING ELECTIONS REPEATEDLY: An election authorizing the issuance of school bonds is not invalid because the directors repeatedly called elections until the consent of the electors was obtained; and it cannot be objected that the directors finally intimidated the electors by threatening to continue to call elections until the issuance of the bonds was authorized, when such threats were only alleged inferentially.—*Luzader v. Sargeant*, (Wash.), 30 Pac. 142.

POWER OF SCHOOL DISTRICT OFFICERS: The officers of a school district have no inherent power as a board to build a school house, or to create any district liability in a matter that is committed by the statute exclusively to the qualified voters of the district, and if they act without the express will of the electors, or exceed the power conferred upon them, their action does not bind the district.—*School District No. 80 v. Brown (Kan.)*, 43 Pac. 102.

Section 1047. Manner of Holding Election. Bonds, how Signed: Such elections must be held in the manner prescribed for elections in this title. The ballots must contain the words "bonds yes" or "bonds no." If two-thirds of the votes cast at such election are "bonds yes" the board of trustees must issue such bonds in such forms as the board may direct; they must bear the signature of the chairman of the board of trustees and be countersigned by the clerk of the school district, and the coupons attached to the bonds must be signed by said chairman and said clerk; and each bond so issued must be registered by the county treasurer in a book provided for that purpose, which must show the number and amount of each bond and the person to whom the same

is issued, and the said bonds must be sold by the said school trustees as hereinafter provided

1899, 5th Ses. p. 102, Sec. 70; 1893, 2d Ses. p. 212, Sec. 70.

Section 1048. Sale of Bonds: The school trustees must give notice in some newspaper published in the state, for a period of not less than four weeks, to the effect that said school trustees will sell bonds, briefly describing the same, and stating the time when, and the place where said sale will take place. *Provided*, That the said bonds must not be sold for less than their par value, and the trustees are authorized to reject any bids and to sell said bonds at private sale if they deem it for the best interest of the district, and all money arising from the sale of said bonds must be paid forthwith into the treasury of the county in which said district may be located, to the credit of said district, and the same are immediately available for any of the purposes authorized by this chapter.

1899, 5th Ses. p. 102, Sec. 71; 1893, 2d Ses. p. 13, Sec. 71.

Penalty for failure of trustee to pay over money: Penal Code, Sec. 4799.

Section 1049. Faith of District Pledged. District a Body Corporate The faith of each school district is solemnly pledged for the payment of the interest and the redemption of the principal of all bonds, which are issued under this chapter. And for the purpose of enforcing the provisions of this chapter, each school district is a body corporate, and may sue and be sued by or in the name of the board of school trustees of said district.

1899, 5th Ses. p. 103, Sec. 72; 1893, 2d Ses. p. 213, Sec. 72.

LIABILITY OF DISTRICT FOR MONEY ADVANCED: Where a school district contracted for a loan on bonds which were afterwards declar-

ed to be void, it is liable for money advanced in good faith under the contract which was used for school purposes.—*State v. Dickerman*, 16 Mont. 278, 40 Pac. 698.

Section 1050. Annual Tax. Investment of Surplus: The school trustees of each district must ascertain and levy annually the tax necessary to pay the interest as it becomes due, and a sinking fund to redeem the bonds at their maturity, and said tax is a lien upon the property of said school district and must be collected in the same manner as other taxes for school purposes. *Provided*, That the said sinking fund, may at the discretion of the board, be loaned on first mortgage or improved farm lands, but no loan shall exceed one-third of the market value of the land, exclusive of the improvements thereon, given as security for such loans. The annual interest on all such loans shall be seven per cent. Said sinking fund may be invested in U. S. bonds, state bonds, county bonds, county or state warrants, when the market value thereof is not below par, at the discretion of said board

1899 5th Ses. p. 103, Sec. 73; 1893, 2d Ses. p. 213, Sec. 73.

Section 1051. Payment of Bonds: When the sum in the sinking fund equals or exceeds the amount of any bond then due, the county treasurer shall post in his office a notice that he will, within

thirty days from the date of such notice, redeem the bond or bonds then payable, giving the number thereof; and preference must be given to the oldest issue; and if at the expiration of the said thirty days the holder or holders of said bond or bonds shall fail or neglect to present the same for payment, interest thereon must cease; but the treasurer shall at all times thereafter be ready to redeem the same on presentation, and when any bonds are so purchased or redeemed the county treasurer must cancel the same by writing across the face of each bond, in red ink, the word "redeemed," and date of such redemption

1899, 5th Ses. p. 103, Sec. 74; 1893, 2d Ses. p. 214, Sec. 74.

Section 1052. Payment of Interest: The county treasurer must pay out of any moneys belonging to a school district the interest upon any bonds issued under this chapter by such school district when the same becomes due, upon the presentation at his office of the proper coupon, which must show the amount due and the number of the bond to which it belonged; and all coupons so paid must be reported to the school trustees at the first meeting thereafter

1899, 5th Ses. p. 103, Sec. 75; 1893, 2d Ses. p. 214, Sec. 75.

Section 1053. Printing of Bonds: The school trustees of any district must cause to be printed or lithographed at the lowest rates, suitable bonds, with the coupons attached, when the same becomes necessary, and pay therefor out of any moneys in the county treasury to the credit of the school district.

1899, 5th Ses. p. 103, Sec. 76; 1893, 2d Ses. p. 214, Sec. 76.

CHAPTER XXXVIII.

SCHOOL DISTRICTS, ORGANIZATION AND POWERS.

Section.

1054. Each district a body corporate.

1055. Power of board of county commissioners over districts. Petition.

1056. Notice by county superintendent

Section.

1057. Granting petition.

1058. Joint districts.

1059. New and joint districts, apportioning funds.

1060. When district lapses.

Section 1054. Each District a Body Corporate: Each regularly organized school district in this state is hereby declared to be a body corporate by the name and style of school district number in the county of State of Idaho; and in that name the trustees may sue and be sued, hold and convey property for the use and benefit of such district and make contracts the same as municipal corporations in this state.

1899, 5th Ses. p. 92, Sec. 34; 1893, 2d Ses. p. 198, Sec. 34.

Officers of district: Sec. 1061.

Powers and duties of officers: Sec. 1065.

BODY CORPORATE, NATURE OF POWERS: A school district when organized as provided by the political code, is a public corporation of a quasi municipal character possessing such authority as has been conferred by the

legislature, to be exercised in the mode and within the limits prescribed by the statute.—*Hughes v. Ewing*, 93 Cal. 414, 28 Pac. 1067; *Kennedy v. Miller*, 97 Cal. 429, 32 Pac. 558; *School Dist. v. Macloon*, 4 Wis. 79. It is so much like a municipal corporation that it cannot be garnisheed, unless the debtor gives consent.—*School Dist. v. Gage*, 39 Mich. 484. It may maintain an action for a specific performance of a contract

to convey a school house site.—*School District v. Macloon*, 4 Wis. 79. As it is organized solely for the public benefit, it is not liable for injuries caused by the negligence of its officers.—*Freel v. Crawfordsville School*, 142 Ind. 27, 37 L. R. A. 301, 41 N. E. 312; *Ford v. Kendall School Dist. (Penn.)*, 1 L. R. A. 607. It may accept a bequest which does not materially increase its burdens.—*Maynard v. Woodward*, 36 Mich. 423; and recognize and pay equitable

claims which are not legal demands.—*Stockdale v. Wayland Dist.*, 47 Mich. 226, 10 N. W. 349. They have corporate existence only by force of their public functions, and the transfer of such functions terminates their existence.—*Stroud v. Stevens Point*, 37 Wis. 367. Being a corporation for educational purposes, a school district can take property by will.—*Estate of Bulmer*, 59 Cal. 131.

Section 1055. Power of Board of County Commissioners over Districts. Petition: The board of county commissioners of the several counties of the state shall have power to create new districts from organized territory, or from old districts, to change the boundaries of any district heretofore established or to attach to one or more districts the territory included within the boundaries of any district which shall lapse by reason of the failure to comply with the provisions of this title: *Provided*, That no district shall be formed from any territory or the boundaries of any district be changed, at any other time than at the regular quarterly meetings of the board; nor at any time, unless a petition for such new district or the change of boundaries is filed in the office of the county superintendent on or before the fifteenth day of the month preceding. If such petition is for a new district it must set forth the boundaries of the new district asked for and must be signed by the parents or guardians of at least ten children of school age who are residents of the proposed new district, and, if for a change of boundaries, such petition must set forth the change of the boundaries desired and the reason for the same, and must be signed by at least two-thirds of those who are heads of families and residents of the district or districts whose boundaries are in question. *Provided further*, That two or more districts lying contiguous may upon a petition of a majority of the heads of families residing in each of said districts, be united to constitute one district; *Provided* also, That no district shall be hereafter divided for the purpose of forming a new district, unless it contains an area of more than nine square miles; nor shall a new district be divided, if by so doing the remainder of the district shall be found to contain less than fifteen persons of school age; nor shall any incorporated city or town hereafter be divided into two or more districts; *Provided further*, When it shall appear that a pupil living in one district can not attend school in his or her own district because of the distance of the school house and for other reasons then when convenient, by an agreement of the trustees of the respective districts, he or she may attend a school in the adjoining district, and that district shall receive for said pupil's tuition from the said pupil's district such an amount as said pupil would be credited with in his or her own district.

1901, 6th Ses. p. 220.

Section 1056. Notice by County Superintendent: It shall be the duty of the county superintendent upon receipt of any

petition as herein provided for, to immediately give notice to all parties interested by sending notice by registered mail to each of the trustees of the district to be affected by such change or changes: and cause printed notices to be posted in at least three public places in the districts so affected, one of which shall be on the door of the school house in said district, for at least one week. Such notice must state the change or changes to be made in said district, that the said petition is on file in the office of the county superintendent, and that the same will be presented to the board of county commissioners at its next regular meeting for final action. The superintendent must transmit the said petition to the said board with his approval or disapproval and, if he approve the same, he may note such changes in boundaries as in his judgment shall be for the best interests of all parties concerned.

1899, 5th Ses. p. 93, Sec. 36; 1895, 3d Ses. p. 158, amending laws of 1893, 2d Ses. p. 199, Sec. 36.

NOTICE, JURISDICTION: The giving of proper notices is absolutely essential to jurisdiction, and it should appear that the statute in that regard was complied with. It is incumbent upon those asserting the regularity of the proceedings or the validity of the order to show that the notices were given which would confer jurisdiction of the subject matter upon the board.

—State v. Graham, 60 Wis. 395, 19 N. W. 359; Gentle v. Board of School Inspectors, 73 Mich. 40, 40 N. W. 928. In this latter case it was also held that where the notice was not given, the filing of the consent of a majority of the resident taxpayers of the district affected by the alteration, to the formation of the new district will not validate such action.—See also School District v. Board of School Inspectors, 63 Mich. 611, 29 N. W. 489.

Section 1057. Granting Petition: The board of county commissioners must at its next regular meeting act upon the petition. If such petition be granted it may be in accordance with the original prayer or with such modifications as it may choose to make.

1899, 5th Ses. p. 94, Sec. 37; 1895, 3d Ses. p. 158, amending laws of 1893, 2d Ses. p. 199, Sec. 37.

EFFECT OF DIVISION: School district does not become dissolved, lose

any of its rights, or become discharged of its obligations by a change of name or by division.—School District v. Macloon, 4 Wis. 79.

Section 1058. Joint Districts: A joint school district may be formed from territory belonging to two or more contiguous counties. For the purpose of organizing a joint district the same preliminary steps must be taken, and the same course be pursued, as is pursued in the organization of other districts, as provided in sections 1055 and 1056. Such districts shall be designated as "Joint district No. of the counties of" and be so numbered that it shall have the same number in all the counties from which it was formed. The petition required by section 1055 shall be made to each county superintendent interested. *Provided*, That the school census, the record of attendance at school, the assessing of property, the collection of taxes, and all acts which from their nature shall be separately kept, shall be kept and done, and the report thereof made as if each portion of said joint district were an entire district in the respective counties. The teacher of such joint district shall not be required to hold a certificate in both counties.

1899, 5th Ses. p. 94, Sec. 38; 1893, 2d Ses. p. 199, Sec. 38.

Section 1059. New and Joint Districts, Apportioning Funds: All new districts formed of unorganized territory shall be entitled to their just proportion of school moneys at the next apportionment and the county superintendent shall place the same to the credit of such district: *Provided*, That in no case shall such district be entitled to use the same unless school has actually been commenced therein and six months shall not have elapsed since the date of its organization. *Provided further*, If any new district is organized from any part of any other organized district or districts, as provided in this chapter, the county superintendent, after having ascertained the amount of moneys belonging to said old district or districts and deducting said indebtedness and liabilities, must apportion to said new district its due per capita proportion of money or indebtedness, as the case may be, from said districts from which it may be formed. And in case of joint districts the county superintendent must apportion to such district such proportion of the school money to which such district is entitled, as the number of school children residing in that portion of the district situated in his county bears to the whole number of school census children in the whole district.

1899, 5th Ses. p. 94 Sec. 39; 1893, 2d Ses. p. 200, Sec. 39.

DIVISION OF PROPERTY: No agreement or condition recited in the order for division will relieve the superintendent of his duty to determine the proportion of the value of the property justly due the new district. An

agreement to consent to the division of the district in consideration of the surrender of the property rights by the new district, is void. The new district cannot be bound by any agreement which petitioners therefor may consent to.—*State v. Kidd*, 63 Wis. 337, 23 N. W. 703.

Section 1060. When District Lapses. Special Tax: If any school district shall, for the period of one year, fail to maintain a school for at least four consecutive months or keep up its organization of officers, as required by law, or if there has been an average attendance for four consecutive months of only five pupils, or less, such district shall lapse, and the money in the treasury of the county belonging thereto shall be apportioned by the county superintendent among the other districts in the same manner as other moneys are apportioned. The property of any school district that shall lapse, shall be sold by the county superintendent in such manner as he shall deem best. The proceeds of such sale, after the payment of any indebtedness of said district, shall be placed to the credit of the general school fund.

The territory included within the boundaries of the said school district shall, by order of the county commissioners, be attached to one or more school districts. The board of trustees shall, if necessary, levy a special tax upon all property in the district, which, when added to moneys apportioned by the county superintendent of schools, will be sufficient to provide funds for the maintenance of the school for five months in the year.

The taxes so levied are and shall be a lien upon property taxed the same as are other taxes, and shall be collected in the same manner.

1901, 6th Ses. p. 220.

CHAPTER XXXIX.

TRUSTEES, ELECTION AND DUTIES.

Section.

1061. Election of trustees.

1062. Regular election notice of, manner of conducting.

Section.

1063. Must qualify within fifteen days.

1064. Meetings of board of trustees.

1065. Duties of trustees, school census.

Section 1061. Election of Trustees: At the next regular school election, following the creation of any district, there must be elected a board of trustees consisting of three in number, one of whom must hold office for three years, one for two years, and one for one year, and the ballots must designate the length of time which said trustees are to serve. At the second and every subsequent school election there must be elected one trustee for the term of three years; immediately after their election they must elect from their number a chairman and clerk.

1899, 5th Ses. p. 94, Sec. 41; 1893, 2d Ses. p. 201, Sec. 41.

TRUSTEE IS A PUBLIC AGENT: A school trustee, deriving his official character from a general law and the election of the people of a given dis-

trict, is as much a public agent as if he were the immediate agent of the state or of one of its political divisions. —Ogden v. Raymond, 22 Conn. 379, 58 Am. Dec. 429.

Section 1062. Regular Election. Notice of. Manner of Conducting: The regular election for electing members of the board of trustees shall be held annually in each district on the first Monday in June, at which time it shall be lawful to transact any business pertaining to schools and school interests. The clerk of said board of trustees shall cause printed or written notices to be posted, specifying the time and place of holding such election and the time during which the ballot box shall be kept open, not less, however, than three hours, and further specifying at what hour other business shall be transacted. Said notice shall be posted in three public places in the district, one of which shall be the school house, if there be one, at least ten days previous to such time of election.

If the clerk fails to give such notice, then any two legal voters residing in the district may give such notice over their own names, and such election may be held after the day fixed herein for such election. All elections shall be by ballot, the polls shall be opened by one of the board of trustees, or by any qualified elector if no trustee be present at the time specified in the notice. If no time is specified in the notice then the polls shall be opened at one o'clock p. m. and closed at five o'clock p. m. of the same day. Said election shall be conducted as any other county election, except that one judge and one clerk may constitute the board of election, and any trustee may administer the oath to said judge and clerk. Said judge and clerk shall make return of such election to the county superintendent immediately, which return shall be filed in the office of the county superintendent.

1901, 6th Ses. p. 224, first part of General election laws do not apply:
 Sec. 42. Secs. 822, 923.
 Election to vote special taxes: Sec. Qualified electors: Const. Art. VI,
 1043. Sec. 2.
 Election to vote bonds: Sec. 1047.

Section 1063. Must Qualify Within Fifteen Days:

Trustees must qualify within fifteen days after receiving notice of their election, by taking the official oath, which oath may be administered by either of the other trustees or the retiring trustee and said oath shall be subscribed and filed in the office of the county superintendent.

1899, 5th Ses. p. 97, Sec. 46; 1893, 2d Ses. p. 205, Sec. 46.

Section 1064. Meetings of Board of Trustees: The regular meeting of the board of trustees shall be held on the last Saturday of March, June, September and December. The board may, however, hold other special or adjourned meetings, as they may from time to time determine.

1899, 5th Ses. p. 96 Sec. 44; 1893, 2d Ses. p. 203, Sec. 44.

Section 1065. Duties of Trustees. School Census: It shall be the duty of the trustees of each district to employ teachers, on a written contract, and to discharge the same, and to fix, allow, and order paid their salaries and compensation, and the compensation of the clerk of the board and to determine the rate of tuition of non-resident pupils: *Provided*, That any pupil or pupils of the eighth grade or of high school qualifications of any district shall be eligible to attend any high school within his county without paying tuition, but the county superintendent shall transfer from the district to which said pupil or pupils belong, to the district holding the high school attended, a sum of money bearing the same proportion to the amount of money received by the district during the year as said pupil or pupils bear to the total school census of the district in which said pupil or pupils belong.

The trustees shall have power to discharge any teacher for any neglect of duty, or any cause that, in their opinion, renders the services of such teacher unprofitable to the district, but no teacher shall be discharged before the end of his term, without a reasonable hearing.

Any two of said trustees shall constitute a quorum for the transaction of business.

The trustees shall have charge of all school property in their district and shall have power to receive in trust all real estate or other property conveyed to said school district, and to convey by deed duly executed or delivered, all the estate or interest of their district in any school house or site directed to be sold by vote of their district, and all conveyance made to said board must be made in their corporate name, to-wit:

To trustees of school district No., county, State of Idaho. Said trustees have further power, when directed by a vote

of their district, to build or remove school houses, to purchase, receive, hold and convey real and personal property for school purposes and to hold, purchase and repair school houses and to supply the same with necessary furniture and to fix the location of school houses: *Provided*, That a school house already built shall not be removed, nor a new site for school house be designated, except when directed by a two-thirds vote of the electors of said district at an election to be held for that purpose, which election may be a special or general school election: *Provided*, That no trustee shall be pecuniarily interested in any contract made by the board of trustees of which he is a member, and any contract made in violation of this section is null and void. The trustees of the respective districts must furnish all things, not herein provided for, necessary for the comfort and use of their district, such as fuel, improvements, maps and apparatus, and library, and for such purpose may audit and allow accounts against the school fund of their district, not to exceed twenty-five per cent of the amount of such school fund in any one year: *Provided*, That at least three per cent of the moneys annually appropriated to any district shall be applied by the trustees for the maintenance of a school library, selections of books for which being made from a list of books furnished to each district and compiled by the state board of education.

The board of trustees shall keep the library in a suitable case at the school house, shall keep a list of all books in the library, loan the books to pupils and patrons within the district for a period not to exceed four weeks at any one time, hold patrons, parents, or guardians to strict accountability for books loaned, requiring them to replace the same in event of loss or spoilation, report to the county superintendent the number of books purchased during the year, the number of books lost and other information required by the county superintendent, and for the further good of the library make all needed rules and regulations: *Provided further*, That the trustees shall not draw an order for a warrant in excess of the amount to the credit of the district at the time the order is given. It shall be the duty of the clerk of the board of trustees of each district to keep a record of the transactions of his district in a book furnished by the county superintendent, the form of which shall be prescribed by the state superintendent; said records so kept must show all the data and information required in said book to be shown by the forms thereof; and the trustees of each district must make a full report in writing, annually on the first day of September, to the county superintendent of their county, on blanks furnished, which shall be exact copies of the pages of the book herein required to be kept, together with such matters pertaining to schools as may be required of them by the state or county superintendent.

It is the duty of the trustees of the respective districts on receiving a report from any teacher of the disorderly conduct of any pupil to decide how said insubordinate pupil shall be punished, or whether he or she shall be dismissed from school, and the teacher must en-

force the decision so made. The clerk of the board of trustees must, on the first Monday of April of each year, proceed to enumerate the children of school age in his district, and he must not enumerate any except bona fide residents thereof, and the board of trustees must cause a true and certified copy of said census to be transmitted to the county superintendent.

School age, as herein used, is defined as applying to all persons between the ages of six and twenty-one years. For said services, said clerk shall be allowed as full compensation therefor five cents for each child so enumerated, and the chairman of the board of trustees shall draw his order upon the county auditor, which must be countersigned by at least one other member of the board of said district, for the amount so allowed, and it must be charged against and paid out of the fund of said district.

1901, 6th Ses. p. 221.

POWERS AND RIGHTS: School district officers have only such powers and rights as are conferred by law or arise from fair implication from those granted.—*Hinman v. School District*, 4 Mich. 168; see *Nevil v. Clifford*, 63 Wis. 435, 24 N. W. 65.

TEACHERS: In the absence of proof to the contrary, it will be presumed that a contract with a teacher which is signed by all the district officers, was authorized at a meeting of the board, although they were not together when they signed it.—*Dolan v. Joint School Dist.* 80 Wis. 155, 49 N. W. 960. A school board has no power to contract for the employment of a teacher prior to the annual school board meeting for a term commencing after such meeting.—*Jones v. School Dist. No. 144 (Kan.)*, 51 Pac. 927. If a teacher has been prevented from performing his contract by the destruction of a school house, and the failure of the trustees to provide a place for him to teach, he may recover his wages for the full contract period.—*Smith v. School District*, 69 Mich. 589, 37 N. W. 567; *Casheen v. School District*, 50 Vt. 30. The trustees of a school district in a hearing given to a teacher on the matter of dismissal of such teacher, are not acting as a court, and may adopt such mode of procedure as seems most likely to do justice and promote the best interests of the public. If a teacher discharged for one of the causes mentioned in the statute brings suit for the sum agreed to be paid him, it devolves upon the trustees to show that the teacher was dismissed for sufficient cause, and that in fact such cause existed.—*School Dist. No. 23 v. McCoy*, 30 Kan. 268, 1 Pac. 97, 46 Am. Rep. 92; see *Tripp v. School Dist.* 50 Wis. 651, 7 N. W. 840. There is an implied condition which authorizes the

dismissal of a teacher, if circumstances arise which render him no longer able or fit to perform the duties of his position.—*Freeman v. Bourne*, 170 Mass. 289, 39 L. R. A. 510, 49 N. E. 435. A school district is liable to pay for services of a teacher, who, though duly licensed to teach, had no valid contract, where he taught without objection and properly kept and returned the school register by reason of which the district drew public money according to the attendance at his school.—*Scott v. School Dist. No. 9*, 67 Vt. 150, 27 L. R. A. 588, 31 Atl. 145.

CONTRACTS: Trustees of a school district acting separately cannot make a contract binding on the district.—*Thomas Kane & Co. v. School Dist.* 112, 5 Kan. App. 260, 47 Pac. 561. But if school district furniture so bought has been retained and used by the district for a long period of time, such retention and use will amount to a ratification of the purchase and the school district must pay for the same.—*Furniture Co. v. School Dist. No. 60*, 50 Kan. 727, 20 L. R. A. 136, 32 Pac. 368; *Kane v. School Dist.* 52 Wis. 502, 9 N. W. 459. To the contrary is *Taylor v. District Township*, 25 Iowa, 447; *Johnson v. School Dist.* 67 Mo. 319, holding that the use by the district of articles purchased by the board, or one of its members without authority does not bind it to pay for them. Contracts of school districts with one of its trustees are void.—*Capron v. Hitchcock*, 98 Cal. 427, 33 Pac. 431; *Pickett v. School District No. 1*, 25 Wis. 551, 3 Am. Rep. 105. And also when one member of the board passing the contract has been paid by the contractor to attend the meeting.—*Honaker v. Board*, 42 W. Va. 170, 24 S. E. 544.

DEDICATED LANDS: Lands may be dedicated for public use for school purposes, and such dedication is good

without a donee to take.—School Dist. v. Heath, 56 Cal. 478. It is not essential to such dedication that the legal title should pass from the owner; nor is a deed of writing necessary.—New Orleans v. United States, 10 Peters 662.

Land dedicated for school purposes to public use reverts to the dedicator upon its abandonment for such purposes.—School Dist. No. 2 v. Hart, 3 Wyo. 563, 29 Pac. 741.

CHAPTER XL.

TEACHERS IN THE PUBLIC SCHOOLS.

Section.

1066. Registers and reports.

1067. Duties of teacher.

Section.

1068. No compensation without certificate.

1069. Only citizens may teach.

Section 1066. Registers and Reports: Teachers of the public schools must be furnished with a school register by the trustees of the district, for the purpose of registering the names of their pupils and their daily attendance at school, and at the close of the term said register must be delivered to the clerk of the board of trustees of the district: And the teacher must also be furnished with a blank report by said trustees, which report said teacher must fill up according to the heading of the same and transmit it to the county superintendent of the county at the close of the term, and no teacher shall be allowed an order in excess of ninety per cent. of his or her salary until said report is so made out and transmitted.

1899, 5th Ses. p. 97, Sec. 47; 1893, 2d Ses. p. 205, Sec. 47.

See note "Teachers" to Sec. 1065.

Abuse of teachers a misdemeanor: Penal Code, Sec. 5106.

Section 1067. Duties of Teachers: Every teacher in the public schools may suspend for good cause any pupil and report such suspension to the board of trustees for review. If the action of the teacher is sustained by the board, the pupil may be censured and returned to the school or expelled from school as in the judgment of the board seems proper; but if not sustained, the teacher may appeal to the county superintendent, whose decision shall be final.

Every teacher shall make reports, in addition to those mentioned elsewhere in this title, which may be required by the state superintendent, county superintendent, or by the school district board of trustees; shall use the text books provided for the schools of the state; enforce the course of study and the rules and regulations prescribed by the state superintendent; hold pupils to a strict account for disorderly conduct or improper language in or about the building, on the play grounds and on the way to and from school; shall keep himself or herself above reproach and endeavor to impress upon the minds of the pupils the principles of truth, justice, morality, patriotism and refinement and to avoid idleness, falsehood, profanity, vulgarity and intemperance; give attention during every school term to the cultivation of manners, and shall, if there be a library in the school, devote not less than one hour in each week systematically reviewing the works contained therein.

1901, 6th Ses. p. 215.

POWER TO DISCIPLINE: A school teacher is, within reasonable bounds, a substitute for the parent, exercising his delegated authority. The teacher is vested with the power and discretion to administer moderate correction, in cases of misconduct, but this right is restricted to the limits of his jurisdiction and responsibility as a teacher, and is not a general right, like that

possessed by a parent.—*Van Vactor v. State*, 113 Ind. 276, 3 Am. St. Rep. 645, 15 N. E. 341. For a general discussion of the powers and liabilities of teachers concerning punishment of pupils, see case cited above, and *Boyd v. State*, 88 Ala. 169, 7 So. 268, 16 Am. St. Rep. 31, and notes; see also *State v. Burton*, 45 Wis. 150; *State v. Williams*, 27 Vt. 755; *State v. Mizner*, 50 Ia. 145.

Section 1068. No Compensation Without Certificates: No teacher shall be entitled to, or receive any compensation for the time he or she teaches in any public school without a certificate valid or in force for such time in the county where such school is taught, except that if a teacher's certificate shall expire by its own limitation within six weeks of the close of the term, such teacher may finish such term without re-examination or renewal of his or her certificate.

1899, 5th Ses. p. 98, Sec. 49; 1893, 2d Ses. p. 205, Sec. 49.

See note "Teachers" to Sec. 1065.

CERTIFICATE: A subsequent procurement of a certificate by a teacher, who was not legally authorized to teach

at the time of making a contract, will not make the contract valid so as to entitle him to recover for breach of it by discharge. — *Hosmer v. Sheldon*, School Dist. No. 2, 4 N. D. 197, 25 L. R. A. 383, 59 N. W. 1035.

Section 1069. Only Citizens May Teach: No certificate shall be granted or teacher employed in any of the public schools of this state to any person not a citizen of the United States.

1899, 5th Ses. p. 310, Sec. 17; 1897, 4th Ses. p. 85, Sec. 17.

CHAPTER XLI.

INDEPENDENT SCHOOL DISTRICTS.

Section.

CREATION AND POWERS.

- 1070. How created.
- 1071. Is a body corporate. Powers.
- TRUSTEES.
- 1072. Number, qualifications, term.
- 1073. Biennial elections, conduct of.
- Vacancies.
- 1074. Contracts of board, oath of office.
- Bond. Compensation.
- 1075. Meetings. Quorum.
- 1076. Powers and duty of board.

Section.

APPLICATION OF GENERAL SCHOOL LAW.

- 1077. All provisions of title not inconsistent.
- BONDS.
- 1078. May issue funding bonds.
- 1079. Improvement bonds to be authorized by electors.
- 1080. Levy of taxes for payment of interest and principal.

CREATION AND POWERS.

Section 1070. How Created: Whenever any school district within this state, as established by the board of county commissioners, has within its limits taxable property to the amount of one hundred and fifty thousand dollars or over as shown by the last assessment roll for the county, it may be organized into an independent school district in the following manner: If one-fifth or over of those within the district who are qualified to vote at school elections

shall petition said board for the establishment of such district as an independent school district, and a greater number of such qualified voters do not remonstrate against such establishment, the board must, by its order of record, clearly define the boundaries of such district, if not already defined, and order that, within one month thereafter, the question of so establishing such independent school district be submitted to a vote of all the electors of the district, who, under the provisions of this title, are authorized to vote for the levy of taxes and issue of bonds. They must make the necessary arrangements for such election, giving at least twenty days notice thereof, and of the time and place of holding the same. If the majority of those voting, vote in favor of organizing such independent district, said board must make an order of record declaring such district established, and designate it as the independent school district (state name and number of district) in county, Idaho.

1899, 5th Ses. p. 103, Sec. 78; 1897, 4th Ses. p. 96, Sec. 1, amending laws of 1893, 2d Ses. p. 214, Sec. 78.

Qualified to vote for levy of taxes: Sec. 1043.
Qualified to vote for issue of bonds: Sec. 1046.

Section 1071. Is a Body Corporate. Powers: The district so established is constituted a body corporate and succeeds to the title of all property rights and privileges, and assumes and must discharge and pay all debts, obligations and duties belonging to or devolving upon the old district or districts of which it is so formed and established, and by its corporate name it may:

- First.—Make contracts, sue and be sued.
- Second.—Take, hold and convey such real and personal property only as is needed for actual school purposes.
- Third.—To have a corporate seal.
- Fourth.—To choose such officers as are herein provided for.

1899, 5th Ses. p. 104, Sec. 79; 1893, 2d Ses. p. 215, Sec. 79.

TRUSTEES.

Section 1072. Number, Qualifications, Term: The officers of such district consist of a board of trustees, composed of six qualified electors, who are resident free holders within the district. The first board of trustees must be appointed by the board of county commisisoners immediately after the district is so established, and hold their offices for terms as follows, to-wit: Two until the next school election under the provisions hereof; two for two, and two for four years after such election and until their successors are elected and qualified, and said board so appointing must designate the term of each trustee so appointed.

1899, 5th Ses. p. 104, Sec. 80; 1893, 2d Ses. p. 215, Sec. 80.

Section 1073. Biennial Elections, Conduct of. Vacancies: There must be an election for two members of the board of trustees held on the first Monday of September following the estab-

lishment of such district, and biennially thereafter an election must be held to elect two trustees. The clerk of the board must give at least ten days' notice of the time and place of such election, by publication in a newspaper, or by three posted notices in the district, and at all elections under this chapter voters must have the same qualifications prescribed by this title for school elections. At such elections any person offering to vote may be challenged and required to take all oaths required of voters at general elections in this state; and on refusing to take such oaths, must not be allowed to vote, and the board of trustees may appoint for all such elections two judges and one clerk. Voting must be by ballot, and if upon counting the ballots there is a tie and three qualified persons have the highest and an equal number of votes, the board of trustees must select two from the three, and when there is a failure to elect by reason of a tie vote the board of trustees must select. If any trustee dies, removes from the district or ceases to have the qualifications for such office, or from any cause his office is vacant, or he neglects or refuses to act, or without excuse ceases to attend the meetings of the board for four successive regular meetings thereof, his office thereby becomes vacant, and a majority of said board of trustees may appoint another qualified person to fill his unexpired term.

1899, 5th Ses. p. 104, Sec. 81; 1893, 2d Code.

Ses. p. 216, Sec. 81.

Oaths required at general elections:

Qualifications of school elections: Secs. 814 and 862.

Const. Art. VI, Sec. 2; Sec. 1062 of this

Section 1074. Contracts of Board. Oath of Office, Bond. Compensation: No trustee must be interested in any contract let or made by or with the board, or with any officer thereof, or in any supplies furnished to or for said district, or a surety for the performance of any contract with said board or district, or the agent or partner of any contractor with said board or district; and no action can be maintained or recovery had against said board or district upon any contract or obligation in which any trustee is so interested, but the same is void. Each trustee must, before entering upon the duties of his office, take and subscribe the official oath, which must be filed with the county school superintendent and immediately after the appointment of such trustees by the board of county commissioners, as above provided, and after each biennial election, the trustees, or a majority thereof, must meet at the school house and organize as a board, and from their number must select a chairman, a clerk and a treasurer, or they may elect as treasurer some competent and responsible person who is not a trustee. No school officer whatever must receive any pay or compensation for his time or services or in any way be allowed to make any pecuniary profit or gain by reason of his office, and any school officer or person who has the custody in any way of any school funds must give bonds, with at least two good sureties, in double the amount of funds likely at any time to be in his custody.

1899, 5th Ses. p. 105, Sec. 82; 1893, 2d
Ses. p. 216, Sec. 82.

See note "Contracts" to Sec. 1065.

Section 1075. Meetings, Quorum: Regular meetings of the board of trustees must be held on the second Monday of each month, and special meetings may be called by the chairman of the board, or by any two trustees, by personal notice of the time and place of such meetings to each member of the board, or, if he cannot be found, by leaving such notice at his place of residence with some person of suitable age and discretion. Four trustees constitute a quorum for the transaction of any business, but a less number may adjourn any regular meeting from time to time, until a quorum can be obtained; but no meeting of the board, not provided for by the rules or by law, is legal unless all the members thereof have been notified as provided for in this section.

1899, 5th Ses. p. 105, Sec. 83; 1893, 2d Ses. p. 217, Sec. 83.

Section 1076. Powers and Duty of Board: The board of trustees of said district have power to and it is their duty—

First.—To make such by-laws for their own government and for the government of the schools of the district as they may deem expedient, not inconsistent with the provisions of this chapter.

Second.—To employ or discharge teachers, mechanics or laborers, and to fix, allow and order paid their salaries and compensation, and to determine the rates of tuition for non-resident pupils.

Third.—To levy a special tax if necessary, which when added to moneys apportioned by the county superintendent of schools, will be sufficient to provide funds for the maintenance of the schools for nine months in each year; the special taxes levied by said board of trustees for the payment of interest on bonds and sinking fund, for payment of bonds at maturity, together with the levy for the maintenance of schools, shall not exceed ten mills on the dollar.

Fourth.—To provide furniture, fixtures and apparatus, and for everything needed in the school house or for the use of the board.

Fifth.—To rent, repair and insure school houses and property, and preserve the same for the benefit of the schools of the district.

Sixth.—To build or remove school houses and buildings, and to purchase or sell school lots.

Seventh.—To suspend or expel pupils from school who refuse to obey the rules thereof, and to exclude from school, children under six years of age.

Eighth.—To determine the number and qualifications of teachers who shall be employed and the length of time the school shall be kept, to fix the time for opening or closing of school, and for the dismissal of primary pupils before the regular time of closing schools.

Ninth.—To require pupils to be furnished with proper and suitable books as a condition of membership in the schools.

Tenth.—To exclude from the schools and school libraries of said district all books, tracts, papers and catechisms of a sectarian nature.

Eleventh.—To require teachers to conform to the law and the regulations of the board.

Twelfth.—To protect the morals and the health of the pupils while at school.

1899, 5th Ses. p. 105, Sec. 84; 1893, 2d Ses. p. 217, Sec. 84.

See note to Sec. 1065.

What is sectarian: Note to Sec. 934.

APPLICATION OF GENERAL SCHOOL LAW.

Section 1077. All Provisions of Title not Inconsistent: All the provisions of this title providing for a public school system wherein not contradictory to, or inconsistent with the provisions of this chapter, and which may be made applicable to the objects thereof, are adopted as a part of the law governing the establishment and management of independent school districts.

1899, 5th Ses. p. 106, Sec. 85; 1893, 2d Ses. p. 218, Sec. 85.

BONDS.

Section 1078. May Issue Funding Bonds: The board of trustees of any independent school district, organized under any general or special law, may issue negotiable coupon bonds of their district for the purpose of paying, redeeming or refunding the principal of any of the outstanding bonded indebtedness of their district, whenever the same can be done to the profit or advantage of their district and without the district incurring any additional indebtedness or liability exceeding in any year the income or revenue provided for such year. Said bonds must bear interest at not exceeding six per centum per annum, payable semi-annually, at the office of the treasurer of the district, or at such banking house in the city of New York as may be designated by the board of trustees; and the principal of said bonds, or any part thereof, may, at the option of the district, be paid at any time after ten years, and must be paid within twenty years, from the time they are issued, and in the order in which they are issued and numbered. Semi-annual interest coupons, covering the interest to grow due, must be attached to each bond; the bonds must be signed by the presiding officer of the board and attested by its secretary and the seal of the district, if it have a seal, and the coupons must be signed and the bonds registered by the treasurer of the board. No bond shall be sold at less than its par value, and the proceeds thereof must be devoted to the payment, redemption or refunding of the outstanding bonded indebtedness of the district.

1899, 5th Ses. p. 84, Sec. 1; 1891, 1st Ses. p. 130, Sec. 737.

CONFLICT OF STATUTES: An act to authorize independent school districts to issue bonds, to redeem, fund, or refund their indebtedness, and to provide and improve school houses, and grounds, and furniture and fixtures which act was approved March 6, 1891,

(see Ses. Laws 1890-91 p. 129), and "An Act to establish and maintain a system of free schools" (see Ses. Laws 1890-91, p. 131). both became laws on the same day, and are contemporaneous legislation and not in conflict and should be construed together.—*Barton v. Moscow Independent School District No. 5*, 2 Idaho, 998, 29 Pac. 43.

Section 1079. Improvement Bonds to be Authorized by Electors: The board of trustees of any such independ-

ent district may, whenever two-thirds of the board so decide, submit to the qualified electors of the district, at an election to be held for that purpose, and to be called and conducted as other school elections in said district, the question whether the board shall be authorized to issue the negotiable coupon bonds of the district in an amount to be mentioned in the notice of election, for the purposes of providing and improving school houses and grounds and furniture, apparatus, and fixtures for said district, or for any or either of said purposes; and if at such election two-thirds of the qualified electors of said district voting at said election assent thereto, the board of trustees may issue such bonds of the district to the amount and for the purpose designated in said notice; which bonds shall be in all respects similar to, and shall be signed, negotiated, registered, bear interest, and be made payable as provided in the last preceding section; and no bond shall be sold for less than its par value, and the proceeds thereof must be devoted to the purposes mentioned in said notice.

1899, 5th Ses. p. 85; 1891, 1st Ses. p. 130, Sec. 738. See note to Sec. 1046.

Section 1080. Levy of Taxes for Payment of Interest and Principal: The board of trustees of any such district that has issued bonds under either of the last two preceding sections must annually levy upon all the taxable property of the district, in addition to other authorized taxes, a tax sufficient to pay the interest on all bonds so issued as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time the bonds are issued; which taxes shall be levied, assessed, collected and paid over as other taxes are levied, assessed, collected and paid over in the district, and shall be devoted to the payment of the principal and interest of said bonds only; and the accumulated sinking fund may be used for the redemption of said bonds at any time after ten years from the date of their issue.

1899, 5th Ses. p. 85; 1891, 1st Ses. p. 131, Sec. 739.

CHAPTER XLII.

COUNTY INSTITUTES.

Section.	Section.
1081. County superintendent must hold annual institute.	1083. Teachers allowed pay for attendance, when.
1082. Teachers must attend.	1084. Provisions for holding institute.

Section 1081. County Superintendent Must Hold Annual Institute: The county superintendent of each county in this state must hold annually a teachers' institute at such time as he may designate, and such institute must continue in session not less than five nor more than fifteen days. He must give at least ten days notice of the time and place of holding such institute by publication in some newspaper published in the county or by a written notice to each qualified teacher in the county. *Provided*, That two or more adjoining counties may unite in holding a joint institute

under the joint supervision of the county superintendents of such counties.

1899, 5th Ses. p. 439, Sec. 1, amending 207, Sec. 51.
act on p. 99, Sec. 51; 1893, 2d Ses. p.

Section 1082. Teachers Must Attend: It is the duty all teachers engaged in the county and of all persons holding certificates, to attend such institute and participate in the exercise thereof, and all teachers who may have charge of schools at the time of holding the annual institute must adjourn their schools for the time during which the institute is held. *Provided*, That when joint institutes are held in accordance with the provisions of section 1081 it shall be the duty of all teachers in said counties and of all persons holding certificates therein, to attend such joint institute.

1899, 5th Ses. p. 440, Sec. 1, amending 207, Sec. 52.
act on p. 99, Sec. 52; 1893, 2d Ses. p.

Section 1083. Teachers Allowed Pay for Attendance, When: All teachers who may adjourn school for the purpose of attending any annual county or joint institute must be allowed the same pay while in actual attendance, as when teaching, and the county superintendent must certify to the number of days attendance of each teacher, and the trustees of the several districts must count them as so many days lawfully employed.

1899, 5th Ses. p. 440, amending act on 53.
p. 99, Sec. 53; 1893, 2d Ses. p. 208, Sec.

Section 1084. Provisions for holding Institute: The county superintendent shall procure the services of one or more competent persons to assist in conducting said institute; he must also provide a building, lights, stationery, janitor service, and all things necessary for the holding of the institute; and must present an itemized account of such expenses not to exceed one hundred and fifty dollars, exclusive of the amount received from fees of applicants for teachers' certificates to the auditor of his county, and the county auditor shall issue a warrant in favor of the county superintendent equal to the amount of such expenses. *Provided*, In case joint institutes are held as provided in section 1081, the county superintendents of the counties holding such institutes shall each present an itemized account of such expenses as aforesaid to the auditor of his county and the expenses thereof shall be borne equally by such counties, and the county auditor shall issue a warrant in favor of the county superintendent for the part chargeable against such county.

1899, 5th Ses. p. 440, amending act on 54.
p. 99, Sec. 54; 1893, 2d Ses. p. 208, Sec.

CHAPTER XLIII.

TEXT BOOKS.

Section.

1085. List of text books adopted. Time of use.

1086. Printing and distribution of list of books,

Section.

1087. Duty of publishers.

1088. Purchase of books.

1089. Accounts, by whom kept. Free books.

Section.

1090. Clerk is custodian of books. Who responsible.

1091. Suggestions and regulations.

Section.

1092. Certain books and teachings prohibited.

Section 1085. List of Text Books Adopted. Time of Use: A certificate containing a complete list of all books adopted by the board of text book commissioners, giving the price for which each kind and grade of books will be furnished, and the name and address of the publisher agreeing to furnish the same, certified to by the chairman of said board, must be placed on file in the office of the state superintendent of public instruction, together with a copy of all books named in certificate. The books named in said certificate shall, for a period of six years from and after the first day of September, 1899, be used in all the public schools in the state to the exclusion of all others.

1899, 5th Ses. p. 402, Sec. 4, rewritten by Commission.

LEGISLATIVE POWER OVER SCHOOLS: The regulation of the public schools is a state matter within the domain of the legislature. Hence, an act prescribing text books to be used therein, and regulating the method of procuring them, does not impinge in the slightest degree upon the right of

local self-government.—*State v. Hawthorn*, 122 Ind. 462, 7 L. R. A. 240, 23 N. E. 946. As incident to its constitutional power to make the public school system uniform, the legislature may provide that the books may be obtained through the medium of a contract awarded to the best and lowest bidder.—*Id.*

Section 1086. Printing and Distribution of List of Books: Immediately after the filing of said certificate in his office, the state superintendent of public instruction shall have prepared printed lists of the text books adopted by said board, with the price of each of said books as certified to in said certificate, and shall forward the same to the county superintendents of the several counties of the state, who shall immediately forward one list to each trustee and to each teacher in his county.

1899, 5th Ses. p. 402, Sec. 6.

Section 1087. Duty of Publishers: It shall be the duty of all book publishers, furnishing books to the State of Idaho, under an act to provide for free and uniform text books for the public schools of the State of Idaho, approved March 9, 1899, to keep the books they agree to furnish on hand at all times at their places of business.

1899, 5th Ses. p. 403 Sec. 7, rewritten by Commission.

Section 1088. Purchase of Books: Not later than the first Monday in August, 1899, and at such other times as may be necessary to properly supply the schools of said district, the chairman of each of the several boards of trustees of the county shall forward to the county superintendent of his county a list of the kind of books, and the number of each kind, which will be required to supply the pupils of the public schools of his district. Immediately upon the receipt of this requisition from the chairman of the board of trustees, the county superintendent shall order from the nearest book

publisher or publishers, furnishing said books, the books designated therein, and upon receipt of the duplicate bills from said publishers and upon comparison with the original bills sent to the trustee or other person to whom the order was consigned, and after comparing the same with the published price furnished him by the state superintendent, as hereinbefore provided, shall order the county treasurer to remit the purchase price to the said publishers from the funds of said district; *Provided*, That if the district has no funds to its credit in the hands of the county treasurer, then the said county treasurer shall at once remit from the current expense fund of the county, the same to be reimbursed to the current expense fund of the county, from the funds of the district, as soon as the amount has been paid into the treasury to the account of said district. And *Provided, further*, That if from any cause, the accounts are not paid within ninety days, the same shall draw interest at the rate of seven per cent per annum from the date of the shipment of the books to the date of payment.

1899, 5th Ses. p. 403, Sec. 8.

Section 1089. Accounts, by Whom Kept. Free Books: The county superintendent and the county treasurer shall each keep an account of all books ordered, showing the number of the district, the number and kind of books, the date of the order, the place from whence ordered, the date and the amount of the remittance and such other items as will in their judgment render the whole transaction easily understood. *Provided*, That the electors of each district shall determine by ballot, at the first annual election hereafter occurring, whether or not the text books for said district shall be free text books, and if it shall be determined by said district that said books shall not be free, then any parent or guardian or other person having the legal or actual control of a child or children, shall be required to purchase necessary books for such child or children from the trustees of his district at actual cost to that district, and the trustees shall pay the purchase price back into the treasury, the same to be placed to the credit of said district; *Provided*, That but one such election shall be held during the time for which said text books shall have been adopted; *Provided, further*, That in cases where it is deemed by said trustees that any parent or guardian is unable to pay for said text books, the same shall be furnished free.

1901, 6th Ses. p. 219.

Section 1090. Clerk is Custodian of Books. Who Responsible: The clerk of the board of trustees is hereby made the custodian of the text books belonging to the district, and he shall, on the morning of the opening of the school or prior thereto, count out the number of the books belonging to the district, noting carefully the condition of said books, and placing the same in the hands of the teacher taking a receipt for the same and at the end of the term of the school the said clerk of the board of trustees shall receive the said books from the teacher giving his receipt for them, and any missing or destroyed books shall be accounted for by the teacher.

Provided, That the pupil shall be responsible through his parents or guardians, to the district, if the responsibility is fixed upon said pupil; And, *Provided, further*, That no one shall be responsible for the natural wear and tear of the books. In the interim of the sessions of the school the clerk of the board of trustees shall safely keep the books, and use due diligence in their preservation.

1899, 5th Ses. p. 403, Sec. 10.

Section 1091. Suggestions and Regulations: In connection with the text books that shall have been adopted, the board of text book commissioners is authorized to prepare such suggestions and outlines as in their judgment will be useful to the teachers and schools of the state, which said suggestions and outlines shall be printed and distributed to the teachers and trustees of the state free of charge, by the state superintendent of public instruction. In addition to the suggestions and outlines herinabove mentioned, the state superintendent is authorized and it shall be his duty to prepare and have printed such regulations as he may deem necessary, in regard to the care and custody of the books, and the keeping of the accounts between the districts and the several companies, and such regulations shall be binding on the county treasurer, county superintendent, teachers and trustees.

1899, 5th Ses. p. 404, Sec. 11.

Section 1092. Certain Books and Teachings Prohibited: No books, papers, tracts or documents of a political, sectarian or denominational character must be used or introduced in any school established under the provisions of this title, and any and every political, sectarian or denominational doctrine is hereby expressly forbidden to be taught therein; nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this title.

1899, 5th Ses. p. 101 Sec. 65; 1893, 2d Ses. p. 211, Sec. 65.

SECTARIAN OR RELIGIOUS DOCTRINES: No sectarian or religious tenets or doctrines shall ever be taught in the public schols. No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any public schools of the state.—Const. Art. IX, Sec. 6. The term "sectarian instruction" manifestly refers exclusively to instruction in religious doctrines and the prohibition is only aimed at such instruction as is sectarian; that is to say, instruction in religious doctrines which are believed by some religious sects and rejected by others. Hence, to teach the existence of a supreme being of infinite wisdom, power, and goodness, and that it is the highest duty of all men to adore, obey and love Him, is not sectarian, because all religious sects so believe and teach. The

instruction becomes sectarian when it goes further, and inculcates doctrine or dogma concerning which the religious sects are in conflict. The reading from the Bible in the schools, although without comment on the part of the teacher, is instruction. The use of any version of the Bible as a text book there, and the stated reading of it therein by the teachers to the pupils, is forbidden by this section, notwithstanding children who may wish to do so because of conscientious scruples are at liberty to absent themselves from the school room during the time of such reading. But text books founded upon the fundamental teachings of the Bible, or which contain extracts therefrom, and such portions of the Bible as are not sectarian, may be used in the secular instruction of pupils in such schools, and to inculcate good morals.—State v. District Board, 76 Wis. 177, 7 L. R. A. 330 44 N. W. 967.

CHAPTER XLIV.

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SCHOOL YEAR AND ATTENDANCE OF PUPILS.

Section 1093. School Year and Month: The school year within this state shall commence on the first Monday in September in each year. A school month is four weeks, of five school days.

1899, 5th Ses. p. 102, Sec. 67; 1893, 2d Ses. p. 212, Sec. 67.

Section 1094. Compulsory Attendance: Every parent, guardian or other person in the State of Idaho, having control of a child or children between the ages of eight and fourteen years, shall be required to send such child or children to a public school for a period of twelve weeks in each school year, at least eight weeks of which shall be consecutive, unless such child or children are excused from such attendance by the board of school trustees of the school district in which such parents or guardians reside, upon it being shown to their satisfaction that the bodily or mental condition of such children has been such as to prevent his, her or their attendance at school, or application at study for the period required, or that such child or children are taught in a private school or at home, in such branches as are usually taught in a primary school, or have already acquired the ordinary branches of learning taught in the public schools. *Provided*, In case a public school shall not be taught for a period of twelve weeks, during the year, within three miles of the nearest traveled road of the residence of any such parent or guardian within the school district, he or she shall not be liable to the provisions of this chapter.

1899, 5th Ses. p. 98 first part of Sec. 50; 1893, 2d Ses. p. 206, Sec. 50.

Compulsory education: Const. Art. IX, Sec. 9.

COMPULSORY ATTENDANCE AT GOVERNMENT SCHOOLS.

Section 1095. Duty of Parent or Guardian: Whenever the government of the United States or the State of Idaho shall erect, or cause to be erected and maintained a school for general educational purposes within the State of Idaho, and the expense of the tuition, lodging, food and clothing of the pupils therein is borne by the United States or the State of Idaho, it shall be compulsory on the part of every parent, guardian or other person in the State of Idaho having control of a child or children between the ages of five and eighteen years, eligible to attend said school, to send such child or children to said school for a period of nine months in each year, or during the annual term, unless such child or children is or are excused from such attendance by the principal or superintendent of said school, upon it being shown to the satisfaction of said principal or superintendent that the bodily or mental condition of such child or children has been and is such as to prevent his, her or their attendance at school, or application at study for the period required, or that such child or children is or are taught in the public schools, private school, or other school or at home in such branches as are usually taught in public schools: *Provided*, That in case the government of the United States or the State of Idaho does not make provision for free transportation of said child or children to and from their homes to said school, then he, she or they shall not be liable to the provisions of this sub-division, unless they reside less than ten miles from such school.

1901, 6th Ses. p. 85 Sec. 1.

Section 1096. Notice to be Served on Parent or Guardian: It shall be the duty of all principals or superintendents of the school or schools mentioned in this sub-division, before attempting to enforce the provisions thereof hereinafter mentioned, to serve, or cause to be served, a demand for the attendance of certain children, naming them, and also designating the school to which their attendance is required, upon the parent, guardian or other person having charge of said child or children as may be eligible to attend said school over which he has charge, and a copy of this sub-division; and such parent, guardian or other person having charge of said child or children shall have ten days to either deliver said child or children at said school or to the principal or superintendent thereof, or furnish satisfactory proof that the bodily or mental condition of said child will not admit of attendance.

1901, 6th Ses. p. 86, Sec. 2.

Section 1097. Superintendent to Demand Penalty: If, at the expiration of ten days after such notice or demand, the parents guardian or other person having charge of said child or children, shall have failed or refused to comply with this sub-division, the principal or superintendent shall cause a demand to be made upon such parent, guardian or other person for the amount of the penalty hereinafter provided; and if such parent, guardian or

person shall neglect or refuse to pay the same within five days after making said demand, the superintendent or principal shall commence proceedings in the name of the state for the recovery of the fine herein-after provided, before any court having jurisdiction: *Provided*, That nothing in this sub-division shall apply to any child or children who is or are actually and necessarily compelled to labor for the support of such parent.

1901, 6th Ses. p. 86, Sec. 3.

Section 1098. Penalty for Violation: Any parent, guardian or other person having control or charge of any child or children, failing to comply with the provisions of this sub-division, shall be liable to a fine of not less than five dollars (\$5) nor more than twenty-five dollars (\$25) for the first offense, or less than ten dollars (\$10) nor more than fifty dollars (\$50) for the second offense and each subsequent offense, besides the cost of collection.

1901, 6th Ses. p. 87, Sec. 4.

Section 1099. Fines Placed in School Fund: All fines collected under the provisions of this sub-division shall be paid into the county treasury, the same to be placed to the credit of the general school fund.

1901, 6th Ses. p. 87, Sec. 5.

Section 1100. Trustees to Furnish List of Children to Teacher: It shall be the duty of the board of school trustees of each district in this state, on or before the first Monday in September in each year, to furnish the principal in each public school taught in such district, with a list of all children in the school district between the ages of eight and fourteen years, said list to be taken from the report of the school census marshal.

1899, 5th Ses. p. 98 portion of Sec. 50; 1893, 2d Ses. p. 206, Sec. 50.

Section 1101. Teacher to Report Attendance. Duty of Trustees: At the beginning of each school month thereafter, it shall be the duty of the principal of each school in such district to report to the board of school trustees of such district, the names of all children attending school during the previous school month. When it shall appear, at the expiration of three school months, to the board of school trustees that any parent, guardian or other person having charge or control of any child or children shall have failed to comply with the provisions of this chapter, the board shall cause demand to be made upon such parent, guardian or other person for the amount of the penalty hereinafter provided, and, if such parent, guardian or person shall neglect or refuse to pay the same within five days after the making of said demand, the board shall commence proceedings in the name of the school district for the recovery of the fine hereinafter provided before any court having jurisdiction: *Provided*, That nothing in section 1094 shall apply to any child or children who are actually and necessarily compelled to labor for the support of a parent or parents.

1899, 5th Ses. p. 98, portion of Sec. 50; 1893, 2d Ses. p. 206, Sec. 50.

Section 1102. Penalty of Parent: Any parent, guardian or other person having control or charge of any child or children, failing to comply with the provisions of this chapter, shall be liable to a fine of not less than five dollars nor more than twenty-five dollars for the first offense, nor less than ten dollars, nor more than fifty dollars for the second and each subsequent offense, beside the cost of collection.

All fines collected under the provisions hereof shall be paid into the county treasury, the same to be placed to the credit of the school district collecting the same.

The board of school trustees in each district shall cause to be posted annually, in three public places in the district, notices of the requirements and penalties of this law.

1899, 5th Ses. p. 98, portion of Sec. 50; 1893, 2d Ses. p. 206, Sec. 50.

Section 1103. Non-resident Pupils: Trustees may determine whether pupils outside of their district may attend school in such district and upon what terms.

1899, 5th Ses. p. 102, Sec. 66; 1893, 2d Ses. p. 212, Sec. 66.

RESIDENT PUPILS: A child living with a domiciled resident and tax payer of a school district as a member of his family, with the expectation, on the part of all parties interested, that those relations will continue permanently, although she has never been permanently adopted and may not have

a domicile, in the technical sense of the term, in the district, has a "residence" in the district for school purposes, and cannot be compelled to pay tuition as a non-resident.—Yale v. West Middle School Dist. 59 Conn. 489, 13 L. R. A. 161, 22 Atl. 295; State v. Thayer, 74 Wis. 48, 41 N. W. 1014; Commonwealth v. School Directors, 164 Pa. St. 603, 30 Atl. 507, and note to 26 L. R. A. 581.

Section 1104. Kindergarten Schools, Establishment of: The school board of any school district in the state is hereby empowered to establish and maintain free kindergartens in connection with the public schools of said district for the instruction of children between the ages of three and six years residing in said district, and shall establish such courses of training, study, and discipline and such rules and regulations governing such preparatory or kindergarten schools, as said board may deem best: *Provided*, That nothing in this section shall be construed to change the law relating to the taking of the census of the school population or the apportionment of state and county school funds among the several counties and districts in this state: *Provided, further*, That the cost of establishing and maintaining such kindergartens shall be paid from the special school fund of said districts, and the said kindergartens shall be a part of the public school system and governed, as far as practicable, in the same manner and by the same officers as is now, or hereafter may be, provided by law for the government of the other public schools of the state: *Provided further*, That all teachers employed in these schools shall have a diploma from some reputable kindergarten training school or shall be licensed in accordance with rules and regulations established by the state superintendent of public instruction.

1901, 6th Ses. p. 103, Sec. 1.

ARBOR DAY.

Section 1105. Designation of Day: The Friday following the first day of May in each year shall hereafter be known throughout this state as Arbor Day.

1899, 5th Ses. p. 133, Sec. 1; 1891, 1st Ses. p. 196, Sec. 1.

Section 1106. Exercises: It shall be the duty of the authorities of every public school in this state to assemble the pupils in their charge on that day in the school building, or elsewhere, as they may deem proper, and to provide for and conduct, under the general supervision of the county superintendents of public instruction, such exercise as shall tend to encourage the planting, protection and preservation of trees and shrubs, and an acquaintance with the best methods to be adopted to accomplish such results.

1899 5th Ses. p. 133, Sec. 2; 1891, 1st Ses. p. 196, Sec. 2.

Section 1107. State Superintendent May Prescribe Exercises: The state superintendent of public instruction shall have power to prescribe, from time to time, in writing, a course of exercises and instructions in the subjects hereinbefore mentioned, which shall be adopted and observed by the school authorities on Arbor Day, and upon receipt of copies of such course, sufficient in number to supply all the schools under his supervision, the county superintendent of public instruction shall promptly provide each of the schools under his charge with a copy and cause it to be adopted and observed.

1899, 5th Ses. p. 134, Sec. 3; 1891, 1st Ses. p. 197, Sec. 3.

EDUCATION OF DEAF, DUMB AND BLIND.

Section 1108. Annual Appropriation: There is hereby appropriated, annually, the sum of three thousand dollars, or so much thereof as may be necessary, for the education of the deaf, dumb and blind of this state, under the direction of the state board of education, and the treasurer shall pay the same on the warrant of the auditor for that purpose.

1899, 5th Ses. p. 162, Sec. 1; 1891, 1st Ses. p. 226, Sec. 1.

Section 1109. Board of Education shall Contract with Adjacent States: The said board of education shall enter into contract with some one of the adjacent states or territories (having an institution for the education of the deaf and blind), for the education of the deaf, dumb and blind of the State of Idaho upon the most economical terms possible.

1899, 5th Ses. p. 162, Sec. 2; 1891, 1st Ses. p. 226, Sec. 2.

Section 1110. Payment to Adjacent States: The state or territory in which such institution for the education of the deaf, dumb and blind is located, as designated by the said board of education, shall be paid from the appropriation made in section 1108, at the rate of not to exceed three hundred dollars a year for each scholar's

instruction and board, including board during vacation, on the certificate of the state board of education to be furnished to the state auditor.

1899, 5th Ses. p. 162, Sec. 4; 1891, 1st Ses. p. 227, Sec. 4.

Section 1111. Examination of Applicants, Expenses of:

The state board of education is authorized to provide for the careful examination of all applicants for admission to the institution designated, and to audit and certify to the state auditor all accounts for the expenses of designating said institution and conducting examinations, and all contingent expenses attending the same, and the accounts thereof shall be paid from the appropriation for this purpose made in section 1108.

1899, 5th Ses. p. 162, Sec. 5; 1891, 1st Ses. p. 227, Sec. 5.

Section 1112. Census of Deaf, Dumb and Blind: It shall be the duty of the board of education to ascertain the number of deaf, dumb and blind in the state, of school age and sound mind and body, whose parents are not able to provide for their education, and, as soon as practicable thereafter, take the necessary steps for their education as herein provided for.

1899, 5th Ses. p. 162, Sec. 3; 1891, 1st Ses. p. 226, Sec. 3.

Section 1113. What Children Eligible: All children between the ages of six and twenty-four years, who are too deaf or too blind to be educated in our public schools shall be deemed deaf and blind for the purposes of this chapter.

1899, 5th Ses. p. 462, Sec. 2.

Section 1114. Duty of School Census Marshal: It is hereby made the duty of the census marshal of each school district in the State of Idaho, when he shall enumerate the children of school age in his district, to carefully ascertain what children in that district are deaf or blind as defined in the preceding section, and he shall note the name, age, and sex of such child or children, also the name of parents or guardian or other person having the legal or actual charge of such child or children, and shall report the same to the county superintendent of public instruction, and said county superintendent of public instruction shall include these items in his annual report to the state superintendent of public instruction.

1899, 5th Ses. p. 462, Sec. 1.

TO PREVENT SPREAD OF CONTAGIOUS DISEASES.

Section 1115. Duty of Owner of Premises and Physician:

| The owner, or agent of the owner, of a house in which a person resides who has the small-pox, diphtheria, scarlet fever or any other contagious or infectious disease, dangerous to the public health, and the physician called to attend the person or persons so affected shall, within twenty-four hours after becoming cognizant of the fact, give notice thereof to the clerk of the board of trustees of the school district in which said person so afflicted resides, and said person so

afflicted shall be kept away and apart from all other persons except those whose presence may be necessary to the physical or spiritual well-being of such person or persons.

1899, 5th Ses. p. 451, Sec. 1.

HEALTH REGULATIONS: A school board has power to adopt reasonable health regulations for the benefit of pupils and the general public. — *Duffield v. Williamsport School Dist.* 162 Pa. 476, 25 L. R. A. 152, 29 Atl. 742; and said board has the right to exclude from the schools those who do not comply with the regulations of the city authorities and the school board requiring a certificate of vaccination as a condition of attendance.—*Id.*; *Bissell v.*

Davison, 65 Conn. 183, 29 L. R. A. 251, 32 Atl. 348; to the contrary of this latter opinion see *State v. Burdge*, 95 Wis. 390, 37 L. R. A. 157, 70 N. W. 347, holding that a rule of the board of health, excluding from the public schools, because they have not been vaccinated, children who have the right under the state statute, is void unless there is a statute authorizing it.—See also *Potts v. Breen*, 167 Ill. 67, 39 L. R. A. 152, 47 N. E. 81.

Section 1116. Pupils not Allowed to Attend School:

The school trustees of the various school districts in the state shall not allow any pupil to attend the public schools while any member of the household to which such pupil belongs is sick of small-pox, diphtheria, scarlet fever or other contagious or infectious disease, dangerous to the public health, or during the period of two weeks after the death, recovery, or removal of such sick person; and any pupil coming from such household shall be required to present to the teacher of the school the pupil desires to attend, a certificate, from the attending physician of the facts necessary to entitle him to admission in accordance with the above regulations.

1899, 5th Ses. p. 451, Sec. 2.

Section 1117. Disinfecting Text Books: Whenever any text book or books, belonging to any school district, shall be in any house during the time that pupils residing in such house are prevented from attending the public school in accordance with the provisions of this chapter, such book or books shall not be returned to such public school until the same shall have been thoroughly disinfected under the direction of the attending physician who shall certify the same to the teacher of said school, or to the clerk of the board of trustees in case the school is not in session at such time.

1899, 5th Ses. p. 451, Sec. 3.

Violation of last three sections a misdemeanor: Penal Code, Sec. 4729.

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- Chap. XLVI. Highways.
- Chap. XLVII. Toll Roads.
- Chap. XLVIII. Public Ferries and Toll Bridges.
- Chap. XLIX. Miscellaneous Provisions Relating to Toll Roads, Bridges and Ferries.

CHAPTER XLV.

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FLOATING TIMBER.

Section 1118. Timber Defined: The word "timber" is used in this sub-division to designate all logs, boards, planks, lumber, railroad ties, poles, rails, posts, cordwood or beams, and whether in rafts or otherwise, but does not include the sort of wood commonly called driftwood.

1887 R. S. Sec. 830.

Section 1119. Owner May Reclaim Timber. Damages: Whenever any timber drifts upon any island in any of the waters of this state, or upon the bank of any such waters, the owners of the timber may remove it on paying or tendering to the owner or occupant of the land the amount of the damages which he has sustained by reason thereof, and which may accrue in its removal; and if the parties cannot agree as to the amount of such damages, either party may have the same appraised by two disinterested citizens of the county, who may hear proofs and determine the same at the expense of the owner of the timber.

1887 R. S. Sec. 831.

Section 1120. Unclaimed Timber Sold by Sheriff: If the owner of such timber does not, within three months from the time it was so drifted, take the same away, the owner or occupant of the land must deliver a bill of his charges and appraisement of damages, together with the timber, to the sheriff of the county, and thereafter the sheriff must sell the same after three days notice posted in three public places of the precinct.

1887 R. S. Sec. 832.

Section 1121. Proceeds of Sale, Disposition: When sold, the proceeds of the timber must be applied, first, to the payment of the charges of the sale, and in liquidation of the expenses and dam-

ages awarded to the person entitled thereto; and the residue must be paid to the county treasurer, to be by him paid over to the owner, or his representative or assigns, on the production of satisfactory proof of ownership to the probate judge, and on his order therefor made within one year after its receipt.

1887 R. S. Sec. 833.

Section 1122. Probate Judge, Decision Final: The rejection by the probate judge of any claimant's right to such proceeds is conclusive, unless within six months thereafter he commences action therefor. In case no claim is made or sustained to such proceeds the same must, by the county treasurer, be placed in the common school fund of the county.

1887 R. S. Sec. 834.

Section 1123. Construction of Dams and Booms: No dam or boom must be hereafter constructed or permitted on any creek or river, unless said dam or boom has connected therewith a sluiceway, lock or fixture sufficient and so arranged as to permit timber to pass around, through or over said dam or boom without unreasonable delay or hindrance.

1887 R. S. Sec. 835; 1885, 13th Ses. p. 178, Sec. 6.

Section 1124. Boom or Weir Must Have Passage. Any boom or Weir in or over any creek or river so constructed as to prevent the passage of logs or lumber, is a public nuisance, which may be abated unless a suitable sluiceway, lock or passage, be made thereon, within thirty days after written notice given by any person interested, and any person owning, holding or occupying such boom or weir, is liable to pay five dollars for every day the same remains in or over said creek or river, after thirty days notice to remove the same, and be liable for any damages sustained by individuals by reason of said boom or weir.

1887 R. S. Sec. 836; 1885, 13th Ses. p. 178, Sec. 7.

IMPROVEMENT OF RIVERS.

Section 1125. Company May Improve Stream and Collect Tolls: Any person, company, or corporation may, upon such terms and conditions and subject to such liabilities as are prescribed in this chapter, improve the navigation of any river or tributaries thereof in this state, by deepening, clearing and straightening the channels thereof, and by the construction of dams and booms therein, and by canals to connect therewith, or otherwise if necessary, but shall in no case or in any manner materially obstruct or impede navigation upon any stream by the erection therein of any dam or other obstruction below the head of steamboat navigation upon said stream, and may take and receive such amounts of toll for the passage of barges, rafts, timber, logs, lumber, piling, railroad ties, telegraph or telephone poles, through such river and its tributaries, when the navigation shall be thus improved, as the board of state land commissioners may prescribe as herein provided.

1899, 5th Ses. p. 332, Sec. 1.

State board of land commissioners: Sec. 384 and Chap. XIII. *Spokane Mill Co. v. Post*, 50 Fed. 429.

LEGISLATIVE CONTROL: The control of the legislature over rivers upon which the general government has not exercised power, is unrestricted.—*Woodman v. Kilbourn Mfg. Co.* 1 Biss. 546; *Pound v. Turck*, 95 U. S. 459; *United States v. Beef Slough Co.* 8 Biss. 421, and unless congress assumes control of the commerce of a river, the state within whose boundaries it lies may authorize the erection of piers, dams and booms therein for logging purposes, even though they interfere with navigation.—*Heerman v. Beef Slough Co.* 8 Biss. 234. The legislature may authorize dams across navigable streams for the purpose of improving their navigability. — *Tewksbury v. Schulenberg*, 41 Wis. 584. An act authorizing the erection of a dam is in the nature of a public grant for the use of the surplus waters of the river for the improvement of the country, and the legislature may inquire into its necessity and prescribe conditions upon which it may be made.—*Woodman v. Kilbourn Mfg. Co.* 1 Biss. 546. The right of the public extends to the regulation, control, and erection of the flow, widening or deepening the channel, etc., and to those parts not navigable in the state of nature.—*Wisconsin River Imp. Co. v. Lyons*, 30 Wis. 61; see also *Morgan v. King*, 18 Barb. 277; *Browne v. Scofield*, 8 Barb. 239. The state has exclusive jurisdiction over streams only navigable for certain kinds of craft, certain distances within the state, and is not visited by vessels coming from and going to navigable waters of other states by continuous voyages, and may, for the public good, authorize obstructions at pleasure and (except so far as private property is taken or injured) no action can be sustained therefor.—*Depew v. Wabash & Erie Canal*, 5 Ind. 8. In the case of *Commissioners of Homochitto River v. Withers*, it was held that the rule of the common law is not applicable to our large public rivers used for navigation, but that the rights of the owners of the lands bounded by such streams are subordinate to the rights and power of the state to use and appropriate them to the public good in the promotion of navigation; and that such rivers, whether tidewaters or not, are, as to the jurisdiction and power of the state, to be considered as navigable rivers, is supported by the sounder reason.—*Com'srs of Homochitto River v. Withers*, 29 Miss. 21.

NAVIGABLE STREAMS: Any

stream is navigable on whose waters logs or timbers can be floated to market and they are public highways for that purpose; it is not necessary that they be navigable the whole year for that purpose to constitute them such. If at high water, they can be used for floating timber, then they are navigable. Any stream in which logs will go by the force of the water is navigable.—*Felger v. Robinson*, 3 Ore. 455; *Moore v. Veasie*, 32 Maine, 343; *Dwimer v. Barnard*, 28 Maine, 554; *Haines v. Hall*, 17 Ore. 165, 20 Pac. 831; but while it may not be at all times capable of floating logs, it will suffice that, when the water is high, it is then capable, for such a length of time as would make it useful and profitable for the public to so use it as a highway to float logs to mill or to market.—*Gaston v. Mace*, 33 W. Va. 13, 5 L. R. A. 392, 10 S. E. 60; see also *Olive v. State*, 86 Ala. 88, 4 L. R. A. 33, 5 So. 653. Whenever rivers are found of sufficient capacity to float the products of the mines, the forests, or the tillage of the country through which they flow to market they have always been adjudged by our courts to be subject to the right of passage independent of legislation.—*Brown v. Schofield*, 8 Barb. 239. A stream, which, in its natural condition is capable of being commonly and generally useful for floating boats, rafts, or logs for any useful purpose or agriculture or trade, though it be private property and not strictly navigable, is subject to the public use as a passage way.—*Weise v. Smith*, 3 Ore. 445; *Brown v. Chadbourne*, 31 Maine, 9.

PUBLIC USE OF NAVIGABLE STREAMS: Each person has an equal right to the reasonable use of navigable rivers, or public streams, as public highways. What constitutes reasonable use depends upon the circumstances of each particular case, and no positive rule of law can be laid down, to define and regulate such use with entire precision. In determining the question of reasonable use, regard must be had to the subject matter of the use: the occasion and manner of its application, its object, extent, necessity and duration, and the established usage of the country.—*Davis v. Winslow*, 51 Me. 264. Navigable streams are highways; and a traveler for pleasure is as fully entitled to protection in using a public highway, whether by land or by water, as a traveler for business. If water is navigable for pleasure boating, it must be regarded as navigable water, though no craft has ever been upon it for the purpose of trade or agriculture.—*Attorney Gen-*

eral v. Woods, 108 Mass. 436. The state by virtue of its sovereignty or right of eminent domain may abridge, control, or destroy a public easement in a stream within its limits, but until it does so by positive legislation all persons may lawfully enjoy such easement in common with the state.—*Treat v. Lord*, 42 Me. 552. Navigable streams and the shores to high water mark are held by the state in trust for the public; but qualified rights therein may be granted so far as they are not inconsistent with or aid of the principal use, that of navigation.—*Heckman v. Swett*, 99 Cal. 303, 33 Pac. 1099.

RIPARIAN RIGHTS: If a stream has no capacity to be used for the purpose of trade, commerce or navigation of barges and lighters, as well as other vessels, it belongs absolutely to the riparian owner; and by well settled principles, the legislature cannot make it a highway by simply declaring it to be one. That being a taking of private property for public use, the owner is entitled to compensation. But other modes of transportation have been recognized in some cases decided in this country: as the floating of rafts and logs; and rafting timber and lumber.—*Brown v. Chadbourne*, 31 Me. 9; *People v. Canal*, App. 13 Wend. 355;

Morgan v. King, 18 Barb. 277, 35 N. Y. 459.

INNAVIGABLE STREAMS ARE PUBLIC LANDS, UNITED STATES OWNER OF: The United States is the owner of all innavigable streams on the lands of the United States within the borders of the state, including their banks and bed.—*Lux v. Haggin*, 69 Cal. 255, 10 Pac. 674. The presumption is that streams not meandered in United States survey are not navigable.—*Clute v. Briggs*, 22 Wis. 607. Grants of the government for lands bounded by streams, and under waters, without any reservation of terms, are to be construed as to their effect according to the law of the state in which the lands lie.—*Hardin v. Jordan*, 140 U. S. 428, Rep. Ed. 371; *Webb v. Demopolis*, 95 Ala. 116, 21 L. R. A. 62, 13 So. 289. A grant of public land of the United States carries with it the common law rights to an innavigable stream thereon, unless the waters are expressly or implicitly reserved by the terms of the patent, or of the statute granting the land, or unless they are reserved by the congressional legislation authorizing the patent or other muniment of title.—*Lux v. Haggin*, 69 Cal. 255, 10 Pac. 674.

Section 1126. Certificate of Applicant to Improve:

Such person, company, or corporation shall make and file with the secretary of the board of state land commissioners, a certificate which shall specify: First, the name of the person company or corporation; second, the stream and section of the stream, the navigation of which it is proposed to improve, and the character and extent of the improvement to be made; third, the place in this state where the principal office for the transaction of business is located; fourth, the time when it is intended to begin work and the probable time it will take to complete the work in order to make the stream available for the uses intended by this chapter; Fifth, a statement of the probable amount of capital required to perform said work under the provisions of this chapter; sixth, on the first day of December of each year said person, company or corporation shall make an annual report to the land board of the character of improvements made during the year, and the amount expended in making said improvements, the number of thousand feet of lumber, logs, or other timbers, floated on said stream, the amount of tolls received for any or all of the timber so floated, which statement shall be a sworn statement.

1899, 5th Ses. p. 332, Sec. 2.

Section 1127. Duty of State Board of Land Commissioners. Notice of Application: Upon compliance with the first five provisions of the last preceding section, any person, company or corporation operating under this chapter shall be author-

ized in writing by the state board of land commissioners to improve the navigation of any stream, if the said board shall be of the opinion after proper investigation, that the proposed improvements shall be a public benefit, and that such person, company or corporation is the proper one to make the same, and said board shall fix the time within which said improvements shall be completed and shall require an undertaking to the State of Idaho in an amount equal to the estimated cost of the proposed improvement, conditioned that such person, company or corporation will within the time specified complete such improvement, or in default thereof pay any person aggrieved by such failure all damages that may be sustained thereby, not exceeding the amount of such undertaking, and in case of failure to complete said improvements within the time specified, said person, company or corporation shall forfeit all rights to collect tolls of any person or persons whatsoever, who shall use for purposes of navigation the improvements made by said person, company or corporation, unless the time for completing the same shall have been previously extended by said state board of land commissioners upon good cause shown. *Provided*, That any person, company or corporation making application to said board for permit to improve any stream, shall cause to be published in some newspaper of general circulation, published in the country where said improvements are to be made, or if said improvements are to be made in more than one county, then in each of said counties, a notice that application has been made to said board, stating in said notice the name of the stream and the portion thereof intended to be improved and the date at which the board will hear said application, which notice shall be published for a period of twenty days.

1899, 5th Ses. p. 333, Sec. 3.

DAMAGES TO RIPARIAN OWNERS: Raising the waters of a river beyond the natural, usual, and ordinary high water mark, for the purpose of improving the navigation, gives the riparian owner, whose lands are thereby

overflowed, the right to damages, although the water is raised by dams constructed under legislative authority.—*Carlson v. St. Louis River Dam & I. Co.* (Minn.), 41 L. R. A. 371, 75 N. W. 1044.

Section 1128. Tolls, When Charged, Maximum Rates:

Whenever any portion of said works shall be completed to the satisfaction of said board and it is so far useful that in the opinion of said board tolls should be charged for the use thereof, said board may fix the tolls to be paid for the use of such portion until the whole of said work is completed, and whenever said improvements have been completed and accepted by said board, the rate of toll which any person, company or corporation operating under this chapter may charge for running rafts, timbers, logs, lumber or other floatables, subject to tolls, through said improved stream shall be fixed by the said board, and may be graduated with reference to the distance run upon the portion of said stream improved by said person, company or corporation, and shall not be increased without the consent of said board, but may be changed from time to time by said board: *Provided*, That the maximum toll that may be fixed by said board cannot exceed twenty-five cents per thousand feet, board measure, for any distance not exceed-

ing fifty miles; fifty cents per thousand feet, board measure, for any distance over fifty miles, and not exceeding one hundred miles; seventy-five cents per thousand feet, board measure, for any distance over one hundred miles: *Provided, however,* Such tolls shall not exceed a reasonable and just compensation considering the value of such improvements, and shall be subject to review at all times by the district court of the county in which such improvements are situated.

1899, 5th Ses. p. 333, Sec. 4.

Section 1129. Stream Open to All Persons. Uniform Rates: Any stream improved under this chapter shall be open to all persons for use, upon the payment of toll prescribed as aforesaid, for the passage of barges, logs, rafts, timbers, lumber and other floatables through such improved stream or waters, and uniform rates of toll shall be charged to all persons.

1899, 5th Ses. p. 334, Sec. 5.

THE RIGHT TO FLOAT LOGS: The right of passage on a navigable stream is a common and paramount one, but it must be exercised with due regard to the rights of riparian owners and with ordinary care and skill. Floating logs in such a stream may

cause damage to the estate of such owners; but if driven in an ordinary careful, prudent manner, the party driving is not liable for damages which may result to the riparian owners.—*Coyne v. Mississippi R. R. Boom Co. (Minn.)*, 41 L. R. A. 494, and note, 75 N. W. 748.

Section 1130. Tolls, How Collected: Whenever said tolls are prescribed as aforesaid, the person, company or corporation may collect the same by suit from persons using said improved portion of said stream; the proceedings of such action shall be in accordance with the practice of the courts in which such action is commenced.

1899, 5th Ses. p. 334, Sec. 6.

Section 1131. Lien for Tolls: Such person, company or corporation shall have a lien upon all logs, rafts, timber, lumber or other floatables, driven, rafted or run through such stream or waters, upon which toll shall be charged, for such tolls, and may enforce the same by appropriate action in any court of competent jurisdiction.

1899, 5th Ses. p. 334, Sec. 7.

Section 1132. Duty to Keep Stream Clear of Obstructions: Any such person, company or corporation shall at all times after commencing the collection of any tolls from persons using such improved stream or waters, keep such portion of the stream or waters clear of all unnecessary obstructions and in good condition for the passage of rafts, timber, logs, and lumber as aforesaid, and it shall be the duty of the said person, company or corporation, without unnecessary delay, to make such repairs as shall restore such stream or waters to their proper condition, and in case said person, company or corporation shall fail to comply with the provisions of this section, the person, company or corporation shall for every such neglect or refusal be liable to a forfeiture of one hundred dollars to be recovered in an action of debt by any person or persons aggrieved or injured thereby: *Provided*, That, in all cases, such person, company or corporation shall first have been notified of such defect and the necessary time

for its repair shall have elapsed after such notice and before the commencement of such suit.

1899, 5th Ses. p. 334, Sec. 8.

Section 1133. Mining and Agricultural Rights Not Impaired: The right to carry on mining operations, either placer or quartz, together with the right to use any stream in this state for dumping purposes by miners or mine owners, and the right to use the waters of any stream in this state for mining, agricultural or domestic purposes, and for water power and supply for milling, and to erect ditches and canals and other necessary structures for the purpose of diverting the waters of any stream for said purposes, shall never be denied or in any manner abrogated or abridged by any of the provisions of this chapter.

1899, 5th Ses. p. 334, last part of Penalty for obstructing stream:
Sec. 9. Penal Code, Sec. 5047.

Section 1134. Log Jams; Breaking of: If any person or persons shall put or cause to be put into said stream or waters any logs, timber, lumber or other floatables, and shall not make adequate provisions and put on sufficient force for breaking jams of such logs, timber, lumber or other floatables in or upon such stream or waters for running, rafting or driving the same, and thereby obstructing the floatage or navigation, it shall be lawful for such person, company or corporation to cause such jams to be broken and such logs, lumber, timber, or other floatables to be run, driven, boomed, rafted or secured, at the charge and expense of the person or persons owning such logs, timber, lumber or other floatables, and said person, company or corporation shall have a lien upon such logs, timber, lumber or other floatables, as shall be sufficient to pay and satisfy all just and reasonable charges therefor, and expense and cost thereof, and shall be entitled to take and retain possession of such logs, timber, lumber or other floatables, or so much thereof as may be necessary to satisfy the amount of such charges for breaking such jams and for driving, booming, rafting and running such logs, timber, lumber, or other floatables, and expenses and costs thereon, until the same be satisfied and paid, and such person, company or corporation shall proceed to collect such charges, costs and expenses in the manner hereinafter prescribed.

1899, 5th Ses. p. 334, Sec. 10.

Section 1135. Foreclosure of Liens: Any such person, company or corporation claiming any liens may bring an action against the owner of such property to determine and satisfy the amount of such lien; the proceedings in such actions shall be in accordance with the practice of the courts in which such action is commenced, and the property so held may be levied upon and sold to satisfy any judgment which may be rendered against such owner, together with all costs of such suit, including the costs and expenses of providing for the care and safety of such property.

1899, 5th Ses. p. 335, Sec. 11.

Section 1136. Duration of Franchise: All persons, companies or corporations complying with the provisions of this chapter, who shall improve the navigation of any stream as herein provided, shall be entitled to all of the benefits of this chapter for a period of fifteen years from the date of the filing of the certificate, as provided in section 1126.

1899, 5th Ses. p. 335, Sec. 12.

STATE MAY GRANT FRANCHISE: The state has the right to make improvements in its navigable rivers, for the more safe, convenient, and useful enjoyment of the common right of navigating them.

To render common rights more bene-

ficial, the state may encourage new modes of navigation, and for that purpose may grant an exclusive use (for a term of years) of the waters in the new mode, as compensation for the skill, expense and risk required for its introduction.—*Moore v. Veazie*, 32 Me. 343.

CHAPTER XLVI.

HIGHWAYS.

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ENUMERATION OF HIGHWAYS.

Section 1137. What are Highways: Highways are roads, streets or alleys, and bridges, laid out or erected by the public, or if laid out or erected by others, dedicated or abandoned to the public.

1887 R. S. Sec. 850.

HIGHWAY DEFINED: A highway is nothing but an easement comprehending merely the right of all the individuals in the community to pass and repass, with the incidental right in the public to do all the acts necessary to keep it in repair. This easement does not comprehend any interest in the soil nor give the public the legal possession of it. Such is a description of a highway by all the common law writers; and this being the nature of it, the consequence clearly follows, that the right of freehold is not touched by establishing a highway, but the freehold continues in the original owner of the land in the same manner it was before the highway was established, subject to the easement.—Peck v. Smith, 1 Conn. 103. A legal presumption arises that a road is a public highway, where it has been traveled by the public generally and kept in repair by the proper authorities.—State v. Auch-

ard (Mont.), 55 Pac. 361. A highway can be proved to be such without producing deeds or records establishing it.—Brigham City v. Crawford (Utah), 57 Pac. 842.

DEDICATION: When Lewis platted the townsite of Blackfoot and left one hundred feet of ground running through the central part of said town and designated it on the town plat as "West Main Street" and he and his grantee permitted the public to use the same as a street for ten years or more without objection, the appellant is estopped from claiming that said entire one hundred feet of ground was not dedicated as a street, regardless of the general statement on the plat that streets are sixty-six feet wide.—Smith v. Montgomery, 2 Idaho, 1187, 31 Pac. 812. Where the public assume to appropriate lands for public use, and the owner opposes no objection, but acquiesces in its continued use by the public for such length of time that the

public convenience and accommodation might be materially affected by an interruption of the enjoyment, an intention to dedicate will be presumed.—*Whittaker v. Ferguson* (Utah), 51 Pac. 980. The public use must be of such duration that the public interest and private rights would be materially impaired if the dedication were revoked, and the use by the public discontinued.—*San Francisco v. Canavan*, 42 Cal. 541; *School Dist. v. Heath*, 56 Cal. 478; *Hoadley v. San Francisco*, 50 Cal. 265; *Kittle v. Pfeiffer*, 22 Cal. 485; and where there is no abandonment or dedication of the land, the use for a limited time by the public, cannot fairly raise the presumption of a dedication. A dedication of land to the public use may be made by deed or other overt act, or may be presumed from the lapse of time as acquiescence of the party.—*City of San Francisco v. Scott*, 4 Cal. 115.

ACCEPTANCE: Until accepted, the dedication, whether made by deed or otherwise, may be revoked by the owner of the land. To constitute a

valid and complete dedication, two things must occur, to wit: an intention by the owner, clearly indicated by his words or acts, to dedicate the land to public use, and an acceptance by the public of the dedication. This acceptance is generally established by the use of the public of the land for the purpose to which it had been dedicated.—See *San Francisco v. Calderwood*, 31 Cal. 585; *Harding v. Jasper*, 14 Cal. 643; *Child v. Chappel*, 9 N. Y. Rep. 257; *San Francisco v. Canavan*, 42 Cal. 541. Formal acceptance by the corporate authorities is not necessary, where the dedication is irrevocable, it need not be followed by immediate and continuous use.—*Carter v. City of Portland*, 4 Ore. 339; *State v. Trask*, 27 Am. Dec. 554, note p. 263.

JURISDICTION: The section of the Pol. Code, providing that all highways laid out or now used by the public are public highways, does not supply jurisdiction where none was acquired in the creation of such highway.—*State v. Auchard* (Mont.), 55 Pac. 361.

Section 1138. Further Enumeration: Roads laid out and recorded as highways, by order of the board of commissioners, and all roads used as such for a period of five years, provided the latter shall have been worked and kept up at the expense of the public or located and recorded by order of the board of commissioners, are highways. Whenever any corporation owning a toll bridge, or a turnpike, plank, or common wagon road is dissolved or discontinues the road or bridge, or has expired by limitation, the bridge or road becomes a highway.

1887 R. S. Sec. 851, amended by laws of 1899, 5th Ses. p. 168; 1893, 2d Ses. p. 12.

PRESCRIPTIVE RIGHT: It is not necessary that a highway be worked throughout its entire length at public expense, to come within the provisions of this section, which declares that all roads used as such for a period of five years, which have been worked and kept up at public expense, are highways.—*Gross, Road Overseer, v. McNutt et al.* (Idaho), 38 Pac. 935. Prescriptive right may attach for establishment of highway over public lands while such land is held under pre-emp-

tion or homestead claim, prior to issuance of government patent.—*Smith v. Mitchell* (Wash.), 58 Pac. 667. A highway by prescription does not exist unless proof establishes that the general public has used the way without interruption for the time fixed by the statute of limitations, applicable to lands.—*State v. Auchard* (Mont.), 55 Pac. 361. Occasional travel on a road across government land, which has never been laid out, recorded, or worked as a public road, will not constitute it a highway.—*Sutton v. Nicolaisen* (Cal.), 44 Pac. 805.

Section 1139. Abandonment of Highway: A road not worked or used for the period of five years ceases to be a highway for any purpose whatever.

1887 R. S. Sec. 852.

ABANDONMENT: That a highway legally laid out is actually used for public travel to the extent of only half its legal width, the other half being cultivated by adjoining land-owners, is not an abandonment of any part thereof,—

Hentzler v. Bradbury, 5 Kan. App. 1, 47 Pac. 330; see *Madison v. Mayers*, 97 Wis. 399, 40 L. R. A. 635, 73 N. W. 43. Where the public have acquired an easement in land for a highway by adverse user, the taxation and payment

of taxes on the same, will not constitute an abandonment.—*Schwerdtle v. Placer County*, 108 Cal. 589, 41 Pac. 448. On the question of the existence of a county road where the location is established, the burden of showing abandonment is on the land-owner.—*Dingwall v. Board of Com'rs of Weld County*, 19 Colo. 415, 36 Pac. 148.

Placing gates, with the consent of a member of the board of supervisors, across a highway, and maintaining the same for the statutory period of limitations, does not establish an abandonment of the easement by the public.—*Schwerdtle v. Placer County*, 108 Cal. 589, 41 Pac. 448.

Section 1140. Record of Roads and Districts: The clerk of the board of commissioners must keep a book in which must be recorded separately all proceedings of the board relative to each road district, including orders laying out, altering, and opening roads; and in a separate book a description of each road district, its overseers, its roads, highways, contract, and all other matters pertaining thereto.
1887 R. S. Sec. 853.

RULES AND RESTRICTIONS ON USE OF HIGHWAYS.

Section 1141. Public Acquires Only Right of Way: By taking or accepting land for a highway, the public acquire only the right of way and the incidents necessary to enjoying and maintaining it. All trees within the highway, except only such as are requisite to make or repair the road or bridges on the same land, are for the use of the owner or occupant of the land.

1887 R. S. Sec. 860.

EASEMENTS OF ABUTTING OWNERS: An abutting proprietor is entitled to the use of the street in front of his premises to its full width, as means of ingress and egress and for light and air; and this right is as much property as the soil within the boundaries.—*Willamette Iron Works v. Oregon R. & Nav. Co.* 26 Ore. 224, 29 L. R. A. 88, 37 Pac. 1016; *Block v. Salt Lake*

Rapid Transit Co. 9 Utah, 31, 24 L. R. A. 610, 33 Pac. 229; *Abendroth v. Manhattan R. Co.* 122 N. Y. 1, 25 N. E. Rep. 496, 11 L. R. A. 634; *Edmison v. Lowry* (S. D.), 17 L. R. A. 275, 52 N. W. 583.

TITLE: The creation of a public road through land of a private owner does not divest him of the fee, but gives the public merely a right-of-way.—*Western U. Tel. Co. v. Williams*, 86 Va. 696, 8 L. R. A. 429, 11 S. E. 106.

Section 1142. Adjoining Owner May Construct Sidewalk: Any owner or occupant of land may construct a sidewalk on the highway along the line of his land, subject, however, to the authority conferred by law on the board of commissioners and the overseers of highways; and any person using such sidewalk with horse or team without permission of the owner, is liable to such owner or occupant in the sum of five dollars for each trespass, and for all damages suffered thereby.

1887 R. S. Sec. 861.

Section 1143. Adjoining Owner May Plant Trees: Any owner or occupant of land adjoining a highway not less than three rods wide, may plant trees on the side contiguous to his land. They must be set in regular rows, at a distance of at least six feet from each other and not more than six feet from the boundary of the highway. If the highway is more than six rods wide the row must not be less than six nor more than twelve feet from the boundary of the highways. Whoever injures any of them is liable to the owner or to the occupant for the damage which is thereby sustained.

1887 R. S. Sec. 862.

PROTECTION OF SHADE TREES: An owner of land adjoining a public highway, whose title extends to the center of the road, who has cultivated shade trees planted partly on his own land and partly in the line of the highway within the bounds of his deed, has a property interest in such trees, and a right to their enjoyment subject only to the convenience of public travel.—*Daily v. State*, 51 Ohio St. 348, 24 L. R. A. 724, 37 N. E. 710. A telegraph company has no right to cut off branches from trees in a highway which belong to an abutting owner in order to clear a way for its line, merely because it has permission from the public to construct its line along the highway.—*Id.* And the power of selectmen to cut and trim trees overhanging a highway, without the consent of the owner, for the purpose of making a change in telegraph

or telephone wires is denied in *Bradley v. Southern New England Telegraph Co.* 66 Conn. 559, 32 L. R. A. 280, 34 Atl. 499. The destruction of shade trees standing on the outer edge of the sidewalk of a residence because municipal authorities regard them as an obstruction to the walk and injurious to health, does not render the city or its authorized agents liable for damages to the abutting proprietor.—*Tate v. Greensboro*, 114 N. C. 392, 24 L. R. A. 671, 19 S. E. 767; *Chase v. Oshkosh (Mich.)*, 15 L. R. A. 553; but an ordinance declaring that healthy growing trees on or near the edge of the roadway of a street to constitute a nuisance or obstruction, and directing their removal, is void if they are neither obstructions nor nuisances to the street in fact.—*State v. Vineland*, 56 N. J. L. 474, 23 L. R. A. 685; 28 Atl. 1039.

Section 1144. Gas, Water and Railway Corporations: May Lay Tracks, Etc.: Every gas, water, or railroad corporation has power to lay conductors and tracks through the public ways and squares in any city, village, or town when it is established, with the consent of the municipal authorities thereof, and under such reasonable regulations and for such compensation as the authorities and the law prescribes.

1887 R. S. Sec. 863.

RAILROADS: The statutes have reference to railroads which are public or quasi-public in their character and the city council has no authority to grant a license to construct and operate a purely private railroad upon or across public streets.—*Gustafson v. Hamm (Minn.)*, 22 L. R. A. 565. The right of the city to authorize a railroad track does not extend to the license of the practical monopoly of the street by the railroad.—*Lockwood v. Wabash R. Co.* 122 Mo. 86, 24 L. R. A. 516, 26 S. W. 698, and a city cannot authorize a steam railroad in a highway devoted to wholesale business, when the operation of the railroad particularly destroys the use of the street for street purposes.—*Id.* An act of the legislature or an ordinance of a city authorizing a railroad company to construct its road in a public street gives it the right only as against the public, but not as against owners of the abutting premises having private property rights in the street.—*Lamm v. Chicago St. P. M. & O. R. Co.* 45 Minn. 71, 10 L. R. A. 268, 47 N.

W. 455; *Theobald v. Louisville N. O. & T. Co.* 66 Miss. 279, 4 L. R. A. 735, 6 So. 230. Nor does the conveyance to the railroad company by the owner of the fee of the right-of-way along a public highway give the company a right to use such highway for railroad purposes without authority from the state.—*Western R. of Ala. v. Alabama C. T. R. Co. (Ala.)*, 17 L. R. A. 474. No action will lie by an abutting lot owner, who does not own the fee in the street, for injuries which merely result from the legal and reasonable use of the public street by a railroad company which leaves his right of ingress and egress reasonably sufficient.—*Iron Mountain R. Co. v. Bingham*, 87 Tenn. 522, 11 S. W. 705, 4 L. R. A. 622, and note. While a street railroad company has a right to run its cars on a public street, yet the public has also a right to travel on the streets, and the railroad company must exercise such care and precaution for the purpose of avoiding accidents and endangering property or person, as a reasonable prudence would suggest.—*Shea v. P. & B. V. R. R. Co.* 44 Cal. 414.

POWERS AND DUTIES OF BOARDS OF COUNTY COMMISSIONERS AND HIGHWAY OFFICERS.

Section 1145. Duty of County Commissioners: The board of county commissioners by proper ordinances must:

First.—Divide the county into a suitable and convenient number of road districts.

Second.—Cause to be surveyed, viewed, laid out, recorded, opened, and worked such highways as are necessary for public convenience, as in this chapter provided;

Third.—Cause to be recorded as highways such roads as have become such by use or abandonment to the public;

Fourth.—Abolish or abandon such as are unnecessary.

Fifth.—Contract, agree for, purchase or otherwise acquire the right-of-way over private property for the use of public highways, and for that purpose institute or require the prosecuting attorney to institute proceedings under the Code of Civil Procedure, and to pay therefor from the district road fund of the particular district;

Sixth.—Let out by contract the improvement of highways, and construction and repair of bridges or other adjuncts to highways, when the amount of work to be done by contract exceeds one hundred dollars: *Provided*, That at least twenty-five per cent. of the fund collected in any road district must be expended within the district in which such fund was collected;

Seventh.—Levy a property road tax to be paid into the county road fund.

Eighth.—Cause to be erected and maintained on the highways they may designate, guide posts properly inscribed.

Ninth.—Cause the road tax provided for in sub-division seventh collected each year to be paid into the road fund and kept by the treasurer in a separate fund;

Tenth.—Audit and draw warrants on the road fund of the county required to pay for the right-of-way or improvement thereon.

Eleventh.—Cause the overseers of the several road districts in their respective counties to return to the assessor and collector of the county in the month of December in each year a complete list of all persons in their respective districts who are delinquent for road poll taxes for that year, and cause the assessor and collector to charge the amount of such delinquent taxes upon the delinquent tax roll as other delinquent taxes are charged, and collect the same as other delinquent per capita taxes are collected: *Provided*, That from the time any delinquent road poll tax shall be so charged upon the delinquent tax roll of the county, the same becomes a lien upon all the property of the persons against whom charged to the same extent that taxes levied for the general state and county purposes becomes a lien thereon when delinquent.

1901, 6th Ses. p. 82.

Laying out, altering and discontinuing roads: Sec. 1185 et seq.

Recording highways: Sec. 1140.

Contract roads: Sec. 1149.

LEVY OF ROAD TAX: Boards of county commissioners must levy a road tax on all property in the county, for road purposes, which, when collected, must be turned over to the county treasurer, 25 per cent of which

must be expended in the road district where collected. *City of Genesee v. Latah County (Idaho)*, 36 Pac. 701.

LIABILITY OF COUNTY: A county is not liable for damages sustained by reason of negligence in the construction and maintenance of highways and bridges unless made so by statute.—*Davis v. Ada County (Idaho)*, 47 Pac. 93; *Crowell v. Sonoma County*, 25 Cal. 313; *Sievers v. San Francisco*, 115 Cal.

648, 47 Pac. 687. The non-liability of a county is based upon the doctrine that the highway officers are public officers and not mere agents of the county.—*Sievers v. San Francisco*, supra; *Waldrom v. Haverhill*, 143 Mass. 582, 10 N. E. 481; *Bates v. Rutland*, 62 Vt. 178, 9 L. R. A. 363, 20 Atl. 278. See note on this subject to *Bate v. Horner* (Vt.), reported in 22 L. R. A. 824, 27 Atl. 134. The courts have drawn a distinction between the liability of counties and the liability of cities and towns, the weight of authorities being to the ef-

fect that the counties are not liable, while cities and towns are liable. See *Davis v. Ada County*, supra, and cases there cited. When any specific duty is imposed by statute upon any officer of the county or municipality, for his failure to perform it, he alone is generally deemed responsible.—*Hoffman v. San Joaquin County*, 21 Cal. 427; *Godard v. Harpswell*, 30 Am. St. Rep. 373 and note; *Crowell v. Sonoma County*, supra; *Leoni Township v. Taylor*, 20 Mich. 163; *Sievers v. San Francisco*, supra.

Section 1146. State Wagon Roads, Repair of: It shall be the duty of the board of county commissioners of the respective counties, wherein any portion of a wagon road built at the expense of the state, after the completion and acceptance of said road by the state, to cause the portion thereof within their county to be repaired and maintained as are other public roads within their county; *Provided*, however, That nothing herein contained shall be construed to waive any right the state may have in and to said road or any right to legislate in the future as to said road.

1889, 15th Ses. p. 31, Sec. 26; 1899, 5th Ses. p. 179, Sec. 25; the sections referred to applied to particular wagon roads, but as they included all the state wagon roads authorized to be

built by acts of the legislature, this section was framed by the commission as a general section covering the subject.

Section 1147. Road Districts: Road districts must be carefully and distinctly defined and described; until such division is made the road districts of the various counties must continue as they are at present defined. Road districts may be altered, changed, created or modified by the board of commissioners, as occasion requires.

1887 R. S. Sec. 871.

Road districts in cities and towns: Sec. 1923.

Section 1148. General Road Purposes: From the road tax collected from all sources the board of commissioners may annually set apart all sums in excess of that required by law to be expended in particular road districts, for general county road purposes, from which they may direct such amounts to be paid as may be found necessary for such general road purposes.

1887 R. S. Sec. 874, rewritten by commission to conform to amendments to

Secs. 870 and 886 of the R. S.

Section 1149. Letting Road Contracts: The county commissioners shall at least three weeks prior to the regular meeting in July, when necessary, cause notice to be published in some newspaper, published in the county, for sealed proposals to be received by said board for keeping in repair and improving the public roads and highways in all districts, set apart as contract road districts; and each proposal, or bid, so submitted to the board, shall be accompanied by a bond conditional for the faithful performance of the duties of the contract, which may be entered into by and between the party making the proposal, or bid, and the board of county commissioners, in a

sum not less than double the amount of the bid for the improvement and keeping in repair of the roads and highways within the district proposed, the bond to be secured by two or more sureties who shall justify in the same form and manner as is required on bonds of county officers: *Provided*, That all bidders shall be residents of the road district which they contract for. At the time stated in the notice, the board of county commissioners shall open and examine the proposals, or bids, and award to the lowest and best bidder the contract for not less than two nor more than three years for the respective contract road districts: *Provided further*, That the board shall reserve the power to reject any and all bids.

1899, 5th Ses. p. 129, Sec. 3; 1895, 3d Ses. p. 23; 1893, 2d Ses. p. 185.

Section 1150. Duty of Contractors: Any person or persons contracting as provided in this chapter shall cause all roads and highways, in their respective districts, to be kept clear of obstruction, and in good repair, banks to be graded, bridges and crossings to be made where the same may be necessary to keep the same in good repair and put in snow bridges when snow roads are used during the winter months, whenever the same may be required, and to use reasonable diligence in keeping each road passable.

1899, 5th Ses. p. 131, Sec. 16; 1893, 2d Ses. p. 186.

Section 1151. Neglect of Duty by Contractor, Penalty: The board of county commissioners upon learning that any of the public roads are not repaired and kept in good order by any one contracting to do so in a contract road district shall have power and shall cause the same to be done by placing labor thereon; and such expense shall be retained from any amount that may be due him on his contract, and should that be insufficient, or nothing be due thereon, the deficiency or whole amount, as the case may be, shall be collected from his bondsmen, as other liabilities.

1899, 5th Ses. p. 131, Sec. 16; 1893, 2 d Ses. p. 176.

Section 1152. How Contractors are Paid: The several amounts allowed to the contractors in the several and respective contract road districts shall be audited and allowed as other claims against the county by the board of county commissioners at their regular meeting, and shall be paid quarterly.

1899, 5th Ses. p. 132, Sec. 16; 1893, 2d Ses. p. 186.

Section 1153. Road Poll Taxes in Contract Districts : In all road districts set apart as contract road districts, the road poll tax thereon shall be collected by the tax collector and be, by him, paid into the county treasurer and applied to the county road fund.

1899, 5th Ses. p. 132, Sec. 16; 1893, 2d Road poll tax: Sec. 1161.
Ses. p. 186.

ROAD OVERSEER.

Section 1154. Election of Road Overseer: The qualified electors of each road district in the several counties of the state,

shall meet on the first Monday in December of each year, at 1 o'clock p. m., and proceed to elect a road overseer, who must be an elector of the district.

1899, 5th Ses. p. 306, Sec. 1; 1897, 4th Ses. p. 78.

ROAD OVERSEER: The relation between a county and its road overseers

bears no resemblance to that of master and servant, nor to that of employer and employee.—Crowell v. Sonoma County, 25 Cal. 313.

Section 1155. Notice of Election. Place of Holding:

Notice of such election, and the place of holding the same, may be given by any five of the qualified electors of the road district, by posting notices at least ten days previous, to the time of holding such election, in at least three of the most public places in such road district. The place of holding such election shall be as nearly as practicable in the center of such road district.

1899, 5th Ses. p. 306, Sec. 2; 1897, 4th Ses. p. 78.

Section 1156. Conduct of Election: Said election shall be conducted in the same manner as school elections, and immediately after the assemblage of such electors, they shall elect a judge and clerk from their number, who shall serve as judge and clerk of such election without compensation.

1899, 5th Ses. p. 306, Sec. 3; 1897, 4th Ses. p. 78.

Section 1157. Result of Election. Bond. Oath of Office: The candidate receiving the highest number of votes cast for such overseer at such election, shall be declared duly elected and shall be so certified to the clerk of the board of county commissioners of the county, by the judge and clerk of such election. The clerk of the board of county commissioners shall prepare a certificate of election, in accordance with the returns so made, and the person receiving such certificate shall, before entering upon his duties as such road overseer, furnish a good and sufficient bond in the sum of three hundred dollars, in favor of the county, and approved by the board of county commissioners, and the said overseer, when such bond is approved, shall, further, before entering upon his duties, take and subscribe to the usual oath of office.

1899, 5th Ses. p. 306, Sec. 4; 1897, 4th Ses. p. 78.

Section 1158. Filling Vacancies: In case of vacancy or of failure to elect such road overseer, the board of county commissioners shall upon petition, appoint an overseer, who shall serve for the unexpired term. But for cause of neglect of duty, or for neglecting to care for tools, or machinery, belonging to the district, or upon a petition from said district, the board of commissioners may declare such office vacant, and the electors of said district shall elect another overseer as provided for in this chapter.

1899, 5th Ses. p. 306, Sec. 5; 1897, 4th Ses. p. 79.

Section 1159. Duties of Road Overseer: Road overseers, under the direction and supervision and pursuant to orders of the board of commissioners, must:

First.—Take charge of the public highways within their respective districts.

Second.—Keep them clear from obstructions and in good repair.

Third.—Cause banks to be graded, bridges and causeways to be made where necessary, keep the same in good repair, and renew them when destroyed.

Fourth.—Give two days' notice to the inhabitants of his road district liable to do work on roads, when, where, with what implements, and under whose direction to work, and superintend the same.

Fifth.—Collect, from each inhabitant notified to work and who fails to work or prefers to pay it, the commutation fee.

Sixth.—Make semi-annual reports of all labor performed in his district to the board of commissioners, under oath.

Seventh.—Receive and present petitions for new roads, recommend or disapprove the same, and assist in laying them out.

Eighth.—Collect all road poll taxes in the mode provided for the collection of other poll taxes, and faithfully account for and pay over the same.

Ninth.—Receive for his services, from money in the treasurer's hands belonging to the road fund, the sum of not less than two dollars and fifty cents, and not more than four dollars for each day's service performed by him, to be fixed by the board of commissioners, annually, at their regular meeting in January, to be audited and ordered paid by the board of commissioners.

1899, 5th Ses. p. 128, Sec. 2; 1891, 1st Ses. p. 191, amending laws of 1887, R. S. Sec. 873.

Duties as to poll taxes: Sec. 1161 et seq.

NO AUTHORITY OVER STREETS IN INCORPORATED CITIES AND VILLAGES: Boards of county com-

missioners cannot authorize road overseers to build, repair, or in any wise interfere with, the highways of an incorporated town or village.—City of Genesee v. Latah County (Idaho), 36 Pac. 701 (see Sec. 1923).

Liability for torts: See note to Sec. 1087.

Section 1160. To Remove from Highway and Bury Dead Animals: It shall be the duty of the road supervisor to remove any dead animal from the public highways whose owners are unknown, and dispose of the same in the manner provided by section 688.

1901, 6th Ses. p. 24, Sec. 2, last part.

HIGHWAY TAXES.

Section 1161. Road Poll Taxes, Who Liable and How Paid: Every male inhabitant of a road district over twenty-one and under fifty years of age must perform two days' labor annually to be known as the road poll tax, upon the roads and highways of the district, under the demand and direction of the road overseer thereof, or pay to such overseer a commutation fee of four dollars, or such smaller amount as may be fixed as the commutation fee by the board of commissioners: *Provided*, That, whenever in the judgment of the board of commissioners of any county it shall be deemed expedient and advisable to work the roads of such county by contracting for the maintenance and repair thereof, they may levy a per capita

road tax of not more than four dollars, upon every male inhabitant in such county over twenty-one and under fifty years of age, to be known as a "road per capita tax," which shall be collected by the tax collector of the county at the time, and in the manner provided for the collection of poll taxes, with like penalty for delinquency in the payment thereof. All provisions of law relative to the printing and delivery of such poll tax receipts to the tax collector, and settlement therefor by the assessor with the auditor, and also for the enforcement and collection thereof, shall apply equally to such road per capita tax, except that the money collected therefrom shall be apportioned to the road fund of such county.

1901, 6th Ses. p. 297.

Section 1162. Road Overseer to Furnish List of Polls: Each road overseer must, within twenty days after his election or appointment and qualification, deliver to the clerk of the board of commissioners, a list of the inhabitants of his district liable for the road poll tax therein. This list must be laid before the board of commissioners at their first meeting held thereafter.

1887 R. S. Sec. 881.

Section 1163: Estimate of Property Tax. Commutation Fee: The board of commissioners must each year, at the meeting at which they are required to levy the property tax for county purposes, estimate the probable amount of property tax for highway purposes which may be necessary for the ensuing year over and above the road poll tax, and must regulate and fix the amount of property highway tax; and at the same time, the board of commissioners must fix the commutation fee for the road poll tax at an amount not exceeding four dollars.

1887 R. S. Sec. 882.

Taxes go to current expense fund:
Sec. 1540.

Section 1164. Road Poll Tax Receipts: At the time of fixing the commutation fee the board of commissioners must provide proper blank road poll tax receipts, to be signed by the clerk of the board, and must deliver to each road overseer a number, equal to the number of inhabitants of their respective district liable for road poll tax, take receipt therefor, and charge the road officer receiving the same therewith; but credit must be given to each road overseer for all unsold blank road poll tax receipts returned to the clerk of the board of commissioners.

1887 R. S. Sec. 883; 1885, 13th Ses. p.167, Sec. 20.

Section 1165. Duty of Overseer Respecting Poll Tax: The road overseers must make out lists of the inhabitants of the road districts liable for road poll tax, and require of each the performance of the labor or the payment of the commutation fee fixed by the board of commissioners and apply such labor and commutation money in the opening, maintenance, and repair of the highways and adjuncts in their respective road districts.

1887 R. S. Sec. 884.

districts: Sec. 1153.

Collection of road poll tax in contract

Section 1166. Adding New Names to Poll List: The overseers must, from time to time, add to the lists the names of persons liable for road poll tax who were omitted or who have become inhabitants of his district since the original list was made, and enforce the road poll tax or collect the commutation fee therefor, and apply the same as hereinbefore provided.

1887 R. S. Sec. 885.

Section 1167. Enforcing Payment of Road Poll Tax: Every road overseer is hereby authorized to demand payment of road poll tax from every person liable therefor, and on the refusal of such person to work or pay the same, he must collect by seizure and sale of any personal property owned by such person. The sale may be made after five days notice of time and place of such seizure and sale.

1899, 5th Ses. p. 392, Sec. 1.

Section 1168. Levy and Collection of Property Tax: The annual property tax for road purposes must be levied by the board of commissioners at their session when the tax is by them levied for county purposes, and must not be less than ten, or exceed sixty cents on each one hundred dollars in value of taxable property. This property road tax, when levied, must be annually assessed and collected by the same officers and in the same manner as other state and county taxes are levied, assessed and collected, and turned over to the county treasurer, for the use of the road fund.

1899, 5th Ses. p. 129; 1891, 1st Ses. p. 192, Sec. 3, amending laws of 1887 R. S. Sec. 886. Collection of property taxes: Chap. LVI.

Section 1169. Levy Special Property Road Tax: The board of county commissioners in each county of the state may, at the first regular meeting thereof in January of each year, by resolution entered at length upon the record of minutes of the meeting, levy a special property road tax, not to exceed an amount equal to ten mills on the dollar, on all taxable property in the county, as is shown by the assessment books of the county for the last preceding year (except such property as is within the corporate limits of any incorporate city, town or village), which tax shall be payable either in money or in work and labor, as is hereinafter provided. And from and after such levy such tax shall become a lien upon real property in the same manner and to the same extent that taxes levied for state and county purposes become a lien thereon; and at the same time and place and in the same manner the commissioners shall fix the compensation to be allowed for each day's work or labor of eight hours of a man or team and the use of tools.

1901, 6th Ses. p. 78, Sec. 1.

Section 1170. Auditor Must Deliver Copy of Resolution to Road Overseer: Upon the making of such levy, the auditor must before the first day of the next succeeding April, make, under his seal, and mail to the post office address of or deliver

in person to each road overseer in each district in the county a copy of such resolution or resolutions and a description of all taxable property in his road district, together with the names of the owners thereof, as the same appears on the assessment books of the last preceding year; and also the amount of taxes due from each person, firm, or corporation therein named; and he shall also make and retain in his office copies thereof, showing the names of all persons, firms and corporations owning property in the county subject to the tax herein provided for, together with the amount due from each. And at the time he makes the entries in the assessment book of his county, under the provisions of section 1386, he shall enter therein, under appropriate heading the amount of said taxes opposite the name of the person, to whom the property upon which the same is assessed, belongs, as is shown by said assessment book:

1901, 6th Ses. p. 78, Sec. 2.

Section 1171. Road Overseer Must Give Notice to Perform Work on Road: After receiving such statement from the auditor each road overseer must between the first days of the next succeeding May and July, give notice to all persons, firms or corporations residing in and owning property within his road district, subject to the tax herein provided for, that he or they may perform work or labor upon the public highway in his district, in payment of said tax. Such notice may be either oral or in writing, and must designate the place where and time when (which must not be less than five days from the date thereof), such work and labor may be performed. And in case of non-resident owners, he shall give such notice to the known agents thereof, if any, or to any person, if any there be in possession of the property of such non-resident: *Provided*, That at any time between the said first days of May and July, any person, firm or corporation, not receiving such notice may offer to perform work and labor upon the public highway in payment of any tax herein provided for and the road overseer must designate the place where and time when (which must not be more than five days from the date of such offer), the person so offering may perform such work and labor: *Provided, further*, That any work done by any taxpayers after the said first day of July, at the request of the road overseer of any district, or with his consent and before said taxes become delinquent shall be applied in the payment of the taxes hereinbefore provided for, according to the provisions of sections 1169 to 1174.

1901, 6th Ses. p. 79, Sec. 3.

Section 1172. Tax May be Paid by Performing Work on Road: Every person, firm, or corporation owning any property subject to the tax above provided for may pay the same by performing, or causing to be performed, work and labor upon the public highway in the road district where said property is situated, under the direction and supervision of the road overseer of said district. And the road overseer shall keep an accurate account of all work and labor

so performed by or for any person, firm, or corporation owning property in his district subject to the tax hereinbefore provided for; and after the performance of any such work and labor, and before the fifteenth day of the succeeding July, the road overseer of each district shall make and sign, in duplicate, a receipt or receipts for the amount of work done by or for any person, firm or corporation; and shall deliver one to the person, firm, or corporation entitled thereto, or to his or their agent, and shall transmit the other to the county assessor, who shall, when the assessment book is delivered to him by the auditor for the collection of taxes, credit thereon to the proper person, firm, or corporation the amount of taxes paid, as is shown by such receipt; and the county treasurer shall receive said receipts from the assessor and tax collector in payment of said special property road tax; and the county auditor shall receive said receipts from the county treasurer as a payment of the same: *Provided*, That the assessor may at any time before said taxes become delinquent, receive from any person, firm, or corporation in payment thereof, a receipt signed by the road overseer of the district wherein the property is situated, for work and labor performed, equal to the amount of taxes, which receipt he shall deliver to the county treasurer, and the county treasurer to the county auditor, in payment of said taxes.

1901, 6th Ses. p. 80, Sec. 4.

Section 1173. When Taxes Become Delinquent:

The taxes provided for in section 1169 shall become delinquent at the same time and in the same manner as taxes levied for state and county purposes become delinquent, and thereafter shall be payable in money, and not otherwise, and all laws relating to the collection of delinquent taxes shall be applicable to the taxes therein provided for and to the collection thereof; and such taxes therein provided for, as shall become delinquent, and as shall be paid in money, shall be kept by the county treasurer in a separate fund for the use and benefit of the road district wherein the property is situated, upon which the same was levied; and such moneys shall be used only for the purpose of maintaining the public highway in the district wherein the same was collected, and shall be paid out only upon warrants regularly drawn thereon by the auditor, upon the order of the board of county commissioners for bills presented thereto by the road overseer of such district; and after the same has been allowed as other bills or claims against the county are allowed: *Provided*, That no warrant shall be ordered or drawn upon any such fund of any road district in excess of the amount of money actually in the hands of the county treasurer at the time that any bill shall be presented to the board of county commissioners, nor shall any bill so presented be allowed by the board of county commissioners unless there shall be sufficient funds in the hands of the county treasurer to pay the same, nor shall any liability against the county, or against any road district, be created by the board of county commissioners, or otherwise, for any work or labor performed pursuant to the provisions of sections 1169 to 1174, unless there shall be sufficient moneys in

the hands of the county treasurer to the credit of said road district, to pay the same.

1901, 6th Ses. p. 80, Sec. 5.

Section 1174. Receipts Given for Work Done in Excess of Taxes: If the owner of any property, subject to the tax provided for in section 1169 shall, between the first days of May and September of any year, perform, or cause to be performed, work and labor upon the public highway, at the request of or with the consent of the road overseer of the district, in excess of the amount of taxes levied thereon, the road overseer shall make a receipt in duplicate for the same and shall deliver one to such owner or his agent, and shall forward the other to the county assessor and such work and labor shall be deemed a payment upon any taxes thereafter levied upon the property then owned by such person, and none other; and all county officers shall receive such receipts as a payment thereof in the same manner and to the same extent as is hereinbefore provided: *Provided, always,* That such receipts so issued shall not be transferable to any person or persons whomsoever.

1901, 6th Ses. p. 81, Sec. 6.

Section 1175. General Reference to Highways in Cities: The statutes relating to streets, highways, and bridges in incorporated cities, towns, and villages are contained in Title IX Chapter LXXII.

New Sec. by Commission.

PERFORMANCE OF HIGHWAY LABOR, COMMUTATION.

Section 1176. Work Performed in District of Residence: Road overseers must not require an individual to work out of the district in which he resides.

1887 R. S. Sec. 900.

Section 1177. Corporations Responsible for Poll Tax of Employees: Corporations or other employers of residents in any highway district, are responsible for the road poll tax assessed against their employees, and a notice to the employer or managing agent requiring the payment of the road poll tax of the employee, charges such employer or corporation with such road poll tax.

1887 R. S. Sec. 901.

Section 1178. Days Work. Penalty for Loss of Time: Each person appearing must actually work eight hours each day, to be credited to him by the overseer, for every hour unnecessarily lost or idled away he must be charged two hours, to be worked out on some other day under notice from the overseer. Any person may work by an able bodied substitute.

1887 R. S. Sec. 902; 1885, 13th Ses. p. 168, Sec. 24.

Section 1179. When Person is Delinquent: Every person receiving due notice, who does not appear and labor or commute, is delinquent.

1887 R. S. Sec. 903.

Section 1180. Excuse for Neglect Does Not Exempt:

The overseer's acceptance of an excuse for a neglect in no case exempts the person excused from performing or commuting for the whole number of days, work for which he was assessed.

1887 R. S. Sec. 904.

Section 1181. Semi-Annual Report of Labor by Overseer: Every overseer must make to the commissioners semi-annually a written account, under oath, containing:

First.—The names of all persons assessed to work in his district.

Second.—The names of all who have actually worked, and the number of days.

Third.—The names of all who have commuted, and the amount received from them.

Fourth.—The names of all delinquents, and the amount collected from them.

Fifth.—A full return by items of the amount of labor performed at each separate point, and the manner in which, and the time when, the same was done.

Sixth.—The number of road poll tax receipts sold, and those returned unsold.

Seventh.—An accurate account of every day he himself was employed, and the nature and items of the service rendered.

1899, 5th Ses. p. 129, Sec. 5; 1891, 1st 1887, R. S. Sec. 905.
Ses. p. 192, Sec. 4, amending laws of

Section 1182. Special Reports by Overseer: The commissioners may require special reports from road overseers when deemed proper.

1887 R. S. Sec. 906.

Section 1183. Monthly Report and Remittance by Overseer: The road overseers must accompany their reports with all moneys remaining in their hands at the date of the report; in addition to the reports required of road overseers in section 1181, each road overseer shall, on the first Monday of each month, report to the auditor of his county all moneys that may have come into his hands as such road overseer during the preceding month, stating therein, particularly, the source from which the same was derived. Upon receiving such report the auditor shall certify to the treasurer the amount due from such road overseer and to what fund or funds the same may belong. Within five days the road overseer making such report shall pay over to the county treasurer the whole amount specified in his report for the preceding month. The treasurer shall then make and file with the auditor a receipt for the amount paid, and the auditor shall give to the road overseer a release for the amount and charge the treasurer with the same.

1899, 5th Ses. p. 130, Sec. 6; 1891, 1st 1887, R. S. Sec. 907.
Ses. p. 192, Sec. 5, amending laws of

Section 1184. Penalty for Failure to Report: A failure to make a report as required, or to pay over according to law, or

on the order of the commissioners, any moneys in his hands subjects the overseer to a penalty of twenty-five dollars, to be recovered in an action on his bond, together with any balance due from him; suit therefor may be instituted by the prosecuting attorney under order of the board of commissioners.

1899, 5th Ses. p. 130, Sec. 7; 1891, 1st 1887, R. S. Sec. 908.
Ses. p. 193, Sec. 6, amending laws of

LAYING OUT, ALTERING AND DISCONTINUING ROADS

Section 1185. Ten Inhabitants May Petition: Any ten inhabitants of a road district taxable therein for road purposes, may petition in writing the board of commissioners to alter or discontinue any road or to lay out a new road therein.

1887 R. S. Sec. 920, amending laws of 1885, 13th Ses. p. 162, Sec. 2.

BOARD ACTS JUDICIALLY: In laying out a highway under Pol. Code, Secs. 2681-2690, the board of supervisors exercises judicial functions, and its order approving the report of the viewers cannot be collaterally attacked on the ground that it was made on insufficient evidence.—*Siskiyou County v. Gamlich*, 110 Cal. 94, 42 Pac. 468. (Secs. 1120 to 1130 of Idaho R. S.). It is unnecessary to allege that a board of supervisors, in laying out a public road, exercises judicial functions, for that is true as matter of law.—*Damrell v. E. S. San Joaquin County*, 40 Cal. 154.

OPENING OF A PUBLIC HIGHWAY: If a statute for opening public roads requires a petition for opening the road to be filed with the board of supervisors, and the board to appoint viewers, who are to view the proposed location, and decide whether such proposed location is required for the public convenience, and report the same to the board, the mind of the petitioners upon the one hand, and of the viewers upon the other should concur in respect to the propriety of the proposed location of the road—the entire road, men-

tioned and proposed to be established by the petition, and that, unless there be this concurrence of views between the petitioners and viewers, the board has no jurisdiction to act.—*Brannan v. Mecklenburg*, 49 Cal. 672; *Lowe v. Brannan*, 105 Ind. 249, 4 N. E. 580; *In re Essex Avenue*, 121 Mo. 98, 25 S. W. 891. But the board may make slight deviations.—*Crowley v. Com'rs*, 14 Mont. 292, 36 Pac. 313. It is not essential to a highway at common law, or under our statute, that it be a thoroughfare. A road may be laid out by the public authority which has no issue at one extremity, and abuts on private ground.—*People v. Kingman*, 24 N. Y. 559.

Where the board of supervisors have jurisdiction to lay out a highway, mere irregularity in the proceedings will not render them void.—*Hentzler v. Bradbury*, 5 Kan. App. 1, 47 Pac. 330. A perpetual injunction against opening a road under proceedings which have been taken, does not prevent laying out a road at any future time over the same land whenever the proper steps are taken to acquire the right-of-way and the right has been secured.—*Curran v. Shattuck*, 24 Cal. 427.

Section 1186. What Petition Must Show: The petition must set forth and describe particularly the road to be abandoned, discontinued, altered, or constructed, and the general route thereof, over what lands, and who the owners thereof are, whether the owners consent thereto, and if not, the probable cost of the right of way, the necessity for and the advantage of the proposed change.

1887 R. S. Sec. 921; 1885, 13th Ses. p. 162, Sec. 2.

DESCRIPTION MUST BE DEFINITE: Where the point of beginning of a proposed road is shown by the plat filed to be at a different place from that named in the petition and the report of the viewers appointed thereon, and its further location is not fixed in any of the proceedings except that it is

to run in a northerly direction to a point on a county road, not designated, the description is too indefinite to give the county commissioners jurisdiction to act on its location.—*Pagel v. Board of Com'srs of Fergus County*, 17 Mont. 586, 44 Pac. 86. An order for the laying out of a public highway, which describes it merely as the "Elam Route,"

and as beginning at a certain section corner and extending to "Drum Valley,"

is void.—*People v. Whitaker*, 101 Cal. 597, 36 Pac. 109.

Section 1187. Bond of Petitioners: The petitioners must accompany the petition with a good and sufficient bond, to be approved by the commissioners, in double the amount of the probable cost of the viewing and laying out or altering of any road, conditioned that the bondsmen will pay all the costs of viewing and surveying in case the prayer is not granted, and the road finally not opened.

1887 R. S. Sec. 922; 1885, 13th Ses. p. 165, Sec. 13.

DEFECTIVE BONDS: The fact that a bond accompanying a petition for laying out a road is defective, or that the sureties therein did not properly

justify, does not divest the supervisors of jurisdiction to appoint viewers, and order the road laid out.—*Hopkins v. Contra Costa County*, 106 Cal. 566, 39 Pac. 933; *French-Glenn Live Stock Co. v. Harney County (Ore.)*, 58 Pac. 35.

Section 1188. Appointment of Viewers: Upon filing such petition and bond, the board of commissioners must appoint three viewers one of whom must be a surveyor, to view and survey any proposed alteration of an old or opening of a new road, to be made in accordance with the description in the petition, and submit to the board an estimate of the cost of the change, alteration, or opening, including the purchase of the right of way and their views of the necessity thereof.

1887 R. S. Sec. 923, amending laws of 1885, 13th Ses. p. 163, Sec. 4.

Section 1189. Who May be Viewers; Their Duties: The road viewers must be disinterested citizens of the county, but not petitioners; they must be sworn to discharge their duties faithfully; must view and lay out the proposed alteration or new road over the most practicable route; notify the owners of the land over which it passes of the proposed route; ascertain whether the owners consent thereto, and the amount, if any, they claim or demand for the right of way over the same; estimate the actual damage to any land over which it passes, and the cost of any bridges or grading necessary; the necessity for and public convenience to be subserved by the road, and whether the opening thereof or change therein proposed should be had.

1887 R. S. Sec. 924; 1885, 13th Ses. p. 163, Sec. 5.

EVIDENCE OF QUALIFICATION: The recital in a resolution of county commissioners authorizing the opening of a road, that in accordance with their order appointing persons who possess

the statutory qualifications of a board of viewers, etc., the road is ordered opened, is a sufficient record in their proceedings that the viewers possessed the statutory qualifications.—*Crowley v. Board of Com'rs Gallatin County*, 14 Mont. 292, 36 Pac. 313.

Section 1190. Report of Viewers: When the view and survey of the proposed alteration or new road is completed, the viewers must report to the board of commissioners:

1. The course, termini, length, and cost of construction of the proposed road;
2. The estimate of damage to the owner of any land over which it is proposed to run the road;
3. The names of land owners who consent to give the right-of-way and their written consent thereto;
4. Names of land owners who do not consent, and the amount of damage claimed by each;

5. Such other facts bearing upon the subject, of importance to be known by the board of commissioners.

1887 R. S. Sec. 925.

APPROVAL OF REPORT REGULAR ON ITS FACE, EFFECT OF: Where, under a bill of review directed to a board of supervisors, it appears that the viewers' report is regular on

its face, and the only question raised is whether the report was true, the action of the supervisors in approving the report will not be disturbed.—*Johnston v. Board of Sup'rs Glenn County*, 104 Cal. 390, 37 Pac. 1046.

Section 1191. Report not to be Approved, When: No report of viewers must be approved by the board of commissioners, which, without the consent of the owner and occupant, runs the road:

1. Through an orchard of four years' growth;
2. Through a garden or yard four years cultivated;
3. Through buildings or fixtures, or erections for the purposes of residence, trade, or manufacture;
4. Through inclosures necessary for the use or enjoyment of buildings, fixtures or erections; unless the board of commissioners are satisfied, from personal examination and observation, or from the sworn statement of at least twelve respectable residents of the road district, that the opening of such road through such premises is an absolute necessity, a great public benefit, or a great convenience to a moiety of the inhabitants of the district.

1887 R. S. Sec. 926.

Section 1192. Compensation of Viewers and Surveyor: The viewers must be paid three dollars each per day for their services out of the road fund, and the surveyors, for services in running out and mapping the road and making the plat and field notes, which must be filed when required before he receives his compensation, five dollars per day.

1899, 5th Ses. p. 130, Sec. 8; 1891, 1st Ses. p. 193, Sec. 7, amending laws of 1887, R. S. Sec. 927.

Section 1193. Proceedings of Commissioners on Report: The board of commissioners on the coming in of the report, must fix a day for hearing the same, must notify the owners of land not consenting to give the right of way of the hearing, by having written notice served on them personally, or on the occupant, or agent of the owner, or if neither, by posting notice at the most conspicuous place on the land, or left at the owner's, agent's, or occupant's residence ten days prior to the day fixed for the hearing; and must, on the day fixed, or to which it may be postponed or adjourned, hear evidence and proof from all parties interested for and against the proposed alteration or new road, ascertain, and by order declare, the amount of damage awarded to each non-consenting land owner, and declare the report of the viewers to be approved or rejected. If the report is rejected the road must not be altered or opened.

1887 R. S. Sec. 928.

STATUTORY CONSTRUCTION: A statute which provides for taking the lands of private persons for road purposes must be strictly followed, and the

act must be strictly construed.—*Curran v. Shattuck*, 24 Cal. 427; *Chase v. Putnam*, 117 Cal. 364, 49 Pac. 204. (See Const. of Idaho, Art. I, Sec. 14.) Under the constitution,

private property cannot be taken for public use, except upon compensation made. It is competent for the legislature to fix the mode of condemnation, the method by which damages to individuals shall be determined and the proceedings for their recovery.—*Kimball v. Bd. of Supervisors*, 46 Cal. 19.

NOTICE: Notice to the owner, when proceedings are commenced, is not notice to his vendee, who purchases pending the proceedings.—*Curran v. Shattuck*, 24 Cal. 427. One who makes a general appearance before a board of county commissioners at a meeting held to lay out a road, waives objection to regularity of proceedings.—*Hanson v.*

Cloud County (Kan.), 55 Pac. 468. In proceedings by a board of supervisors to take private land for a public highway, an appearance before the board of one of the persons whose land is about to be taken, is a waiver of service of notice upon such person.—*Kimball v. Bd. of Supervisors*, 46 Cal. 19.

ADMINISTRATRIX CANNOT BIND HEIRS: An administratrix as such has no power to bind the heirs by consenting to a proceeding under the provisions of the Political Code for laying out a public highway, by which they are divested of their estate in lands without their consent.—*Rush v. McDermott*, 50 Cal. 471.

Section 1194. Approval of Report and Acceptance of Award, Effect:

If the board approve the report, and there are no non-consenting land owners, the road must, by order, be declared a public highway, and the road overseer ordered to open the same to the public. If there are non-consenting land owners, the board must appropriate from the road fund, and cause the road overseer to tender to such non-consenting land owners, the award of damages made by the board. If the awards are all accepted the road must be declared a public highway and be opened as before provided.

1899, 5th Ses. p. 130, Sec. 9; 1891, 1st Ses. p. 193, Sec. 8, amending laws of 1887, R. S. Sec. 929.

OPENING ROADS: Before the commissioners can approve the viewers' report and direct the highway to be opened, it must appear that the road is of public utility.—*Butts v. Board of Com'rs of Geary County (Kan.)*, 53 Pac. 771. Where the order of a county board establishing a highway does not state that it was issued upon a petition duly signed, and the petition shown in the record of proceedings in which the order was issued is not signed as required by law, no presumption of validity will be given to the order.—*Thatcher v. Crisman*, 6 Colo. App. 49, 39 Pac. 887. The tender of money awarded by the road viewers to the applicant for damages for opening the road does not give a right to open the road if the applicant sues to recover damages.—*Grigsby v. Burtnett*, 31 Cal. 406; *Harper v. Richardson et al.* 22 Cal. 251; *Lincoln v. Colusa County*, 28 Cal. 663. If an applicant for damages for laying out a road

refuses to accept the sum awarded him by the road viewers, and commences suit in the district court, the public do not acquire a right-of-way until the damages are ascertained in the suit and a final judgment is rendered thereon, and the damages are paid or provided to be paid.—*Grigsby v. Burtnett*, 31 Cal. 406.

LOCATION OF ROAD: The public agents charged with the duty of establishing highways, may, after the report of viewers, make slight deviations from the original proposed location set forth in the petition.—*Crowley v. Board of Com'rs Gallatin County*, 14 Mont. 292, 36 Pac. 313.

COMPENSATION, WHEN PAID: The compensation for the taking of land for public use, as for a road, should precede or accompany the taking, and without it, every act of the board of supervisors is illegal and void.—*Johnson v. Alameda County*, 14 Cal. 107; *San Francisco R. R. Co. v. Mahoney*, 29 Cal. 112.

Section 1195. Proceedings When Award is Rejected:

If any award of damages is rejected by the landowners, the board must, by order, direct proceedings to procure the right of way to be instituted by the prosecuting attorney of the county, under and as provided in the Civil Code of Procedure, against all non-accepting land owners, and when thereunder the right of way is procured the road

must be declared a public highway and opened as hereinbefore provided.

1887 R. S. Sec. 930.

Proceedings to procure title: Code Civil Proc. Sec. 3841 et seq.

Section 1196. Awards, How Paid: All awards by agreement, ascertainment by the board, or by the proper court, must be paid out of the road fund on the order of the board of commissioners.

1899, 5th Ses. p. 130, Sec. 10; 1891, 1st Ses. p. 193, Sec. 9, amending laws of 1887 R. S. Sec. 931.

Section 1197. Width of Highways: All highways, except alleys and bridges, must be at least fifty feet wide except those now existing of a less width.

1887 R. S. Sec. 932.

WIDTH OF ROAD: In the absence of evidence, a highway will be presumed to have been laid out to the minimum legal width.—*Hentzler v. Bradbury*, 5 Kan. App. 1, 47 Pac. 330; see also *Crowley v. Board of Com'rs*, 14 Mont. 292, 36 Pac. 313. Where the

public have acquired the right to a public highway by user, they are not limited in width to the actual beaten path, but the width is a question of fact to be determined from all the facts and circumstances in evidence.—*Whitesides v. Green*, 13 Utah, 341, 44 Pac. 1032.

Section 1198. Private Roads, How Opened: Private or by-roads may be opened for the convenience of one or more residents of any road district in the same manner as public roads are opened, whenever the board of commissioners may for like cause order the same to be viewed and opened, the person for whose benefit the same is required paying the damages awarded to land owners, and keeping the same in repair.

1887 R. S. Sec. 933.

ESTABLISHMENT OF PRIVATE WAYS: The constitution (Art. I, Sec. 14), substantially recognizes the rights of the legislature to provide for laying out private roads or byways, as follows: "The necessary use of lands for reservoirs or storage basins, for the purposes of irrigation, or for rights-of-way for the construction of canals, ditches, flumes, or pipes, or any other use necessary to the complete development of the material resources of the state, is hereby declared to be a public use."—*Latah County v. Peterson*, 2 Idaho, 1118, 29 Pac. 1098; *Lewis Em. Dom. Sec. 167*; *Shaver v. Starrett*, 4 Ohio St. 494; *Ferris v. Bramble*, 5 Ohio St. 109; *Denham v. Commissioners*, 108 Mass. 202; *Sherman v. Buick*, 32 Cal. 242, and some cases there cited; *Monterey County v. Cushing*, 83 Cal. 507, 23 Pac. 700; *Brock v. Town of Barnet*, 57 Vt. 172, cited.

ROADS CALLED "PRIVATE ROADS" ARE FOR PUBLIC USE: Roads leading from the residences or farms of individuals to the main road which runs through the country, call-

ed in the statute "private roads," are of public concern, and under the control of the government, and are open to every one who may have occasion to use them, and are therefore public roads.—*Sherman v. Buick*, 32 Cal. 242; *Latah County v. Peterson*, 2 Idaho, 1118, 29 Pac. 1098; *St. Paul & Sioux City R. R. Co. v. Covell*, 2 Dak. 483; *Masters v. McHolland*, 12 Kan. 17; *Cemetery Association v. Meninger*, 14 Kan. 312; *Welton v. Dickson*, 38 Neb. 767, 57 N. W. 559, case distinguished, *State of Oregon v. Vowels*, 4 Or. 324; *Vedder v. Marion County*, 28 Or. 77, 36 Pac. 535, 41 Pac. 3.

CONDEMNATION: In proceedings to condemn lands for the use of a private road, the court must find separately the value of the land sought to be condemned, and the improvements thereon, the damage to the remaining land by reason of the severance and the benefits which will accrue to the remaining portion of the land in the opening of the road. Without such adjudication, the judgment of condemnation is void.—*Butte County v. Boydston*, 64 Cal. 110, 29 Pac. 511.

Section 1199. Record of Conveyances and Decrees:

In all cases where consent to use the right of way for a highway is voluntarily given, purchased, or condemned and paid for, either an

instrument in writing conveying the right of way and incidents thereto, signed and acknowledged by the party making it, or a certified copy of the decree of the court condemning the same, must be made and filed and recorded in the office of the recorder of the county in which the land so conveyed or condemned must be particularly described.

1887 R. S. Sec. 934.

Section 1200. Railroad Companies to Make Crossings for Highways: Whenever highways are laid out to cross railroads on public lands, the owners or corporations using the same must at their own expense so prepare their road, that the public highway may cross the same without danger or delay, and when the right of way for a public highway is obtained through the judgment of any court, over any railroad, no damage must be awarded for the simple right to cross the same.

1899, 5th Ses. p. 405, Sec. 1, amending laws of 1887, R. S. Sec. 935.

Railroads crossing highway: Civil Code, Sec. 2172.

Section 1201. Removal of Fences From Highway: When the alteration of an old or the opening of a new road makes it necessary to remove fences on land given, purchased, or condemned by order of a court for road or highway purposes, notice to remove the fences must be given by the road overseer to the owner, his occupant, or agent, or by posting the same on the fence, and if the same is not done within ten days thereafter, or commenced and prosecuted as speedily as possible, the road overseer may cause it to be carefully removed at the expense of the owner, and recover of him the cost of such removal, and the fence material may be sold to satisfy the judgment.

1887 R. S. Sec. 936.

Section 1202. Changing Road Over Private Land: If any person through whose lands any public highway is established, is desirous of turning such road through any other part of his lands, such person may, by petition, apply to the county commissioners, to permit him to turn such road through another part of his land without materially increasing the distance to the injury of the public; and on receipt of such petition, accompanied by a sufficient bond to pay the costs and expense to be incurred thereby, the commissioners may appoint three disinterested viewers and surveyor, if they deem it necessary, who must view the ground over which the road is proposed to be turned, and ascertain the distance such road will be increased by the proposed alteration, and a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alterations; and if the viewers report to the commissioners that the prayer of the petition is reasonable, the commissioners, upon receiving satisfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the convenience of travelers, may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new; and the

person petitioning for the alteration must pay all the costs and expense of the view and survey, if ordered.

1887 R. S. Sec. 937.

WHAT CHANGES ARE ILLEGAL: Appellants sought to change a highway by changing the lines of their fence, and attempt to justify the change by showing that the new road was shorter

and a better road than the one fenced up. Held, that changes in highways cannot legally be so made.—Gross, Road Overseer, v. McNutt et al. (Idaho), 38 Pac. 935.

Section 1203. Public Roads Established Without Viewers: Public roads may be established without the appointment of viewers, provided the written consent of all the owners of the land to be used for that purpose be first filed with the board of county commissioners, and if it is shown to the satisfaction of the county board that the proposed road is of sufficient public importance to be opened and worked by the public, they shall make an order establishing the same, from which time only, shall it be regarded as a public road.

1899, 5th Ses. p. 168, Sec. 1; 1893, 2d Ses. p. 11, Sec. 1.

Section 1204. Expense When Survey is Necessary: If a survey for the establishment of the road named in the preceding section is necessary, the board, before ordering such survey, may require the party or parties asking for the establishment of such highway to pay, or secure the payment by proper bond, of the expenses of such survey.

1899, 5th Ses. p. 168, Sec. 1; 1891, 1st Ses. p. 12.

ERECTION AND MAINTENANCE OF BRIDGES.

Section 1205. Maintained by County at Large: All public bridges, not otherwise specially provided for, are maintained by the county at large in the same manner as highways and under the management and control of the road overseer and board of commissioners, the expense of constructing, maintaining, and repairing the same being primarily payable out of the road fund in the hands of the county treasurer, and from road poll taxes.

1899, 5th Ses. p. 130, Sec. 11; 1891, 1st Ses. p. 193, Sec. 10, amending laws of 1887, R. S. Sec. 945.

Section 1206. When Expense Paid From General Fund: Whenever it appears to the board of commissioners that the road fund is or would be unreasonably burdened by the expense of construction and maintenance and repair of any bridge or road they may, in their discretion, cause a portion of the aggregate cost or expense to be paid out of the general fund of the county, and they may levy a special tax, not exceeding one-fourth of one per cent. on the taxable property of the county, annually, until the amount appropriated in aid is raised and paid.

1899, 5th Ses. p. 131, Sec. 12; 1891, 1st Ses. p. 194, Sec. 11, amending laws of 1887, R. S. Sec. 946.

This section is cited in County of Ada v. Bullen Bridge Co. (Idaho), 47

Pac. 818, and while no construction is placed upon it, the court repudiates a construction by counsel at variance with Section 3 of Article 8 of the constitution.

Section 1207. Construction and Repair of Bridges, Contracted When: No bridge, the cost of the construction or

repair of which will exceed the sum of one hundred dollars, must be constructed or repaired except on order of the board of commissioners. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder, after reasonable notice given by the board of commissioners, through the road overseer, by publication at least two weeks in a county newspaper; and if none, then by three posted notices, one at the court house, one at the point to be bridged, and one at some other neighboring public place; the bids to be sealed, opened, and the contract awarded at the time specified in the notice. The contract and bond to perform it must be entered into with the approval of the board of commissioners.

1887 R. S. Sec. 947.

Section 1208. Bridge, How Repaired When Overseer Neglects: If the road overseer of any road district, chargeable with the repair of a bridge, fails to make the needed repairs after being informed that a bridge is impassable or unsafe, and is requested to make the same by two or more taxpayers of the district in which it is situated, or the two districts which it unites, the taxpayers may represent the facts to the board of commissioners, who, upon being satisfied that the bridge is unsafe, must cause the same to be repaired and must pay therefor from the road fund.

1899, 5th Ses. p. 131, Sec. 13; 1891, 1st 1887, R. S. Sec. 949.
Ses. p. 194, Sec. 12, amending laws of

Section 1209. Petition for Construction of Bridge; Notice: When a bridge, the cost of which will exceed one hundred dollars, is necessary, any five or more tax payers of the road districts interested therein may petition the board of commissioners for the erection of such needed bridge. The board must thereupon advertise such application, giving the location and other facts, for two weeks in a newspaper printed in the county, if none, then by posters—one at the proposed location, one at the court house, and one at some other public place in the county, and notify the overseer to attend at a certain time and place to hear the application.

1887 R. S. Sec. 950.

Section 1210. Hearing the Petition: On the day fixed to hear the application, proof of the notice given being made satisfactory, the board must hear the petition, examine witnesses, and determine whether or not a bridge is necessary as petitioned for; if found to be so, the board must determine the character of bridge to be constructed, prepare plans and specifications, invite bids, let the contract, and have the same erected, and provide for the payment therefor as herein provided.

1887 R. S. Sec. 951.

Section 1211. Report of Overseer to Include Account of Bridges: The road overseers must in their official reports give a full account of all bridges of which they have in whole or in part the charge and maintenance, those constructed or repaired, and the

cost thereof, the amounts expended thereon, from what source derived, and the present and prospective condition thereof.

1887 R. S. Sec. 952.

OBSTRUCTION AND INJURIES TO HIGHWAYS.

Section 1212. Removal [of] Encroachments: If any highway duly laid out or erected is encroached upon by fences, buildings, or otherwise, the road overseer of the district may, orally or in writing, require the encroachment to be removed from the highway.

1887 R. S. Sec. 960.

PUBLIC NUISANCE: The revised statute, Sections 960-964, Sections 1212-1216, of this Code, was enacted for the purpose of removing obstructions from highways, and such obstructions as are public nuisances, and was intended to prevent a multiplicity of suits, and a private individual must allege in his complaint and establish facts showing that he has sustained special damages, damages of a different kind and character than the damages sustained by the public, before he can maintain an action for special damages caused by the obstruction of a public street, constituting a public nuisance.—*Stufflebeam v. Montgomery*, 2 Idaho, 763, 26 Pac. 125; *Payne v. McKinley*, 54 Cal. 532. Trespass cannot be maintained by the owner of the soil over which a highway passes caused by a person placing an incumbrance or nuisance thereon, which only impedes or obstruct the way.—*Mayhew v. Norton*, 28 Am. Dec. 300, and note.

ADVERSE OCCUPATION: No one can acquire by adverse occupation, as against the public, the right to obstruct a street dedicated to public

use, and thus prevent the use of it as a public highway, although he may have had actual adverse occupation for more than ten years.—*People v. Pope*, 53 Cal. 437; *San Leandro v. Le Breton*, 72 Cal. 170, 13 Pac. 405; *County of Yolo v. Barney*, 79 Cal. 375, 21 Pac. 833; *Ex parte Taylor*, 87 Cal. 91, 25 Pac. 258. In this last case it was held that a municipal corporation may legalize a partial obstruction of a street or sidewalk which would otherwise be a public nuisance; but when it changes its ordinance so as to revoke the authority, and declares the obstruction unlawful, the obstruction is no longer legal and a continuance of it thereafter constitutes a public offense. And in *Baldwin v. Trimble*, 85 Md. 396, 37 Atl. 176, it is said: "While an encroachment on a highway is a public nuisance and can never grow by prescription into a private right, yet there are cases where, when the use of a highway has been totally abandoned by the public and private rights have grown up in consequence of such abandonment, an equitable estoppel is created against the public to assert the right to the use of the highway."

Section 1213. Notice to Remove Encroachment: Notice must be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he reside in the county; if not, it must be posted on the encroachment, specifying the breadth of the highway, the place and extent of the encroachment, and requiring him to remove the same within ten days.

1887 R. S. Sec. 961.

Section 1214. Penalty for Neglect to Remove: If the encroachment is not removed or commenced to be removed and diligently prosecuted prior to the expiration of the ten days from the service or posting the notice, the one who caused or owns or controls the encroachment forfeits ten dollars for each day the same continues unmoved. If the encroachment is such as to effectually obstruct and prevent the use of the road for vehicles, the overseer must forthwith remove the same.

1887 R. S. Sec. 962.

WHAT ARE OBSTRUCTIONS:

Fences constructed across a highway by the owner of land are a nuisance

which the road supervisors may abate.—Whittaker v. Ferguson (Utah), 51 Pac. 980.

WHO MAY ABATE: An illegal obstruction may be removed from a high-

way, at the direction of the board of supervisors, by one who is not a road overseer.—Bequette v. Patterson, 104 Cal. 282, 37 Pac. 917.

Section 1215. Action for Nuisance When Encroachment Denied:

If the encroachment is denied, and the owner, occupant or person controlling the matter or thing charged with being an encroachment, refuses to remove or to permit the removal thereof, the road overseer must commence in the proper court an action to abate the same as a nuisance; and if he recovers judgment, he may, in addition to having the same abated, recover ten dollars for every day such nuisance remained after notice, as also his costs in such action.

1887 R. S. Sec. 963.

WHO MAY BRING ACTION: An action to abate an obstruction in the public highway is properly brought in the name of the road commissioner.—Hall v. Kauffman, 106 Cal. 451, 39 Cal. 756.

ELECTION OF TITLE: On trial for obstructing a highway, it was not error to refuse to compel the state to elect whether it would rely on prescription, user, dedication, or legal establishment to show the existence of the highway.—State v. Horlacher, 16 Wash. 325, 47 Pac. 748.

Section 1216. Encroachment Not Denied, How and When Removed:

If the encroachment is not denied, but is not removed for five days after the notice is complete, the road overseer may remove the same at the expense of the owner, occupant, or person controlling the same, and recover his costs and expenses, and also for each day the same remained after notice was complete, the sum of ten dollars in an action for that purpose.

1887 R. S. Sec. 964.

DUTY TO REMOVE OBSTRUCTIONS: The supreme court of Illinois in *People v. Bloomington Twp. Highway Com'rs*, 130 Ill. 482, 6 L. R. A. 161, 22 N. E. 596, in construing the words "may remove any such fence or

other obstruction,"¹ authorizing highway officers to remove obstructions, held, that the statute imposed upon such officers an imperative duty of removing obstructions from the public highway, and the word "may" is to be construed as "shall."

Section 1217. No Gates Allowed. Exception:

No gates must be allowed on any public highway duly laid out, except on highways running through land subject to overflow to such extent as to remove the fences. When so allowed they must be erected and maintained at the expense of the owner or occupant at whose request or for whose benefit they were erected. If such expense is not paid, the gate must be removed as an obstruction.

1887 R. S. Sec. 965.

Section 1218. Penalty for Leaving Gate Open, Etc.:

Any one who leaves open such gate, or wilfully and unnecessarily rides over ground adjoining the road on which the gate is erected, forfeits to the injured party treble damages.

1887 R. S. Sec. 966.

Section 1219. Penalty for Obstruction or Injury:

Whoever obstructs or injures any highway, or obstructs or diverts any water course thereon, is liable to a penalty of five dollars for each

day such obstruction or injury remains, and must be punished as provided in the Penal Code.

1887 R. S. Sec. 967.

Punishment provided: Penal Code, Secs. 5032, 5033.

Section 1220. Owners of Live Stock Must Repair Damage to Ditches: Any person or persons owning live stock, or the employees, agent or agents of such owners of live stock, who shall drive, range or graze the same along or across the public highways or ditches, or who shall permit the same to range or graze along or across the public highways or ditches of this state, and thereby obstruct, or partially obstruct, the same by rolling rocks, brush or other debris therein, or destroy or injure any grades, ditches, bridges or approaches to bridges therein, shall, immediately thereafter, repair such highway or ditch, and the damage so done, at their own expense.

1901 6th Ses. p. 185.

Penal provision, Sec. 5045.

Section 1221. Running Water Across Highway: Any person desiring and intending to run water across any public road, street or highway in this state, must first construct a ditch of sufficient size to carry all such water, and must build a good substantial bridge, with good easy grades, over such ditch or ditches, not less than sixteen feet wide, of good hewn or sawed timber or lumber, not less than three inches thick, laid on good substantial timbers, not less than six inches square, said timbers shall not be laid more than three feet apart: *Provided*, That when the quantity of water of any ditch is such that a box or culvert will carry the same, said water may be conducted across any road, street or highway, by means of such box or culvert, which must be adapted to surface of the road, street, or highway, and be built of a length of not less than sixteen feet, and in a manner so substantial as to bear and admit of uninterrupted travel: *Provided*, That when such bridge or box shall be constructed as above required and reported to the road overseer of the road district where the same is located, it shall become county property and be maintained as other county bridges: *Provided*, That the said bridge, box, or culvert is accepted by the road overseer as being built according to this section.

1899, 5th Ses. p. 405, Sec. 2, amending laws of 1887 R. S. Sec. 968; 1885, 13th Ses. p. 172, Sec. 40.

DUTY OF THOSE CONSTRUCTING DITCHES: When a private person or corporation constructs a ditch or canal across a public highway, it gives them no right to destroy it as a thoroughfare, but they are bound both by the common law and the statute to restore or unite the highway at their own expense, by some reasonably safe and convenient means of passage, and keep the same in good repair. This obligation is the same whether the

ditch or canal cuts the highway or street within or without the limits of a city or village.—*City of Lewiston v. Booth (Idaho)*, 34 Pac. 809. The common law and the statutes in force at the time of the construction of a water ditch across the streets of Lewiston, by the Lewiston Water Ditch & Milling Company, and for a long time prior thereto, compelled the defendants to reconstruct and repair said bridges whenever the same became unsafe or inconvenient for public travel.—*City of Lewiston v. Booth et al. (Idaho)*, 34 Pac. 809.

Section 1222. Neglect of Owner of Ditches, Duty of Overseer: If any person owning or having ditches across any

public road, street, or highway, fails or neglects to build bridges or culverts over the same as required by the last section, or to keep the same or their ditches, on any public road, street, or highway, in good repair, it is the duty of the overseer of the district to build or repair the same at the expense of such person, and the cost thereof is a lien upon the land and premises of such ditch owner or owners, and may be sued for and collected, by and in the name of such overseer in any court of competent jurisdiction.

1887 R. S. Sec. 969; 1885, 13th Ses. p. 173, Sec. 41.

Section 1223. Penalty for Removing Guide Post:

Whoever removes or injures any guide post, or any inscription on such, erected on any highway, is liable to a penalty of ten dollars for every such offense, and is punishable as provided in the Penal Code.

1887 R. S. Sec. 970.

Penalty: Penal Code, Sec. 5030.

Section 1224. Removal of Fallen Trees: Any person may notify the occupant or owner of any land from which a tree or other obstruction has fallen upon any highway to remove such tree or obstruction forthwith. If it is not so removed the owner or occupant is liable to a penalty of one dollar for every day thereafter till it is removed, and the cost of removal.

1887 R. S. Sec. 971.

Section 1225. Felling Trees into Highway: Whoever cuts down a tree so that it falls into any highway, must forthwith remove the same and is liable to a penalty of five dollars for every day the same remains in such highway.

1887 R. S. Sec. 972.

Section 1226. Notice on Bridge, Penalty for Disregarding: The road overseers may put up on bridges under their charge notices that there is "five dollars fine for riding or driving on this bridge faster than a walk." Whoever thereafter rides or drives faster than a walk on such bridge is liable to five dollars for each offense.

1887 R. S. Sec. 973.

Section 1227. Penalty for Destroying Shade Trees: Whoever digs up, cuts down, or otherwise injures or destroys any shade or ornamental tree planted and standing on any highway, forfeits twenty-five dollars for each such tree.

1887 R. S. Sec. 974.

See note to Sec. 1143.

Section 1228. Penalties and Forfeitures, How Collected: All penalties or forfeitures given in this chapter, and not otherwise provided for, must be recovered by the road overseers or the respective road districts and be paid into the road fund.

1899, 5th Ses. p. 131, first part of Sec. ing laws of 1887 R. S. Sec. 975.
14; 1891, 1st Ses. p. 194, Sec. 13, amend-

MISCELLANEOUS PROVISIONS.

Section 1229. Highways Crossing Streams, Width of:

All highways crossing or ending on any river, creek or stream, must

be open the same width down to, and across said river, creek or stream, as it is before it reaches said stream.

1889, 15th Ses. p. 33.

Section 1230. Passage Ways for Stock Under Roads:

That the passage ways for stock under any road must be bridged with suitable plank not less than eighteen feet in length, and it shall be lawful for the fences of either side to converge to the bridge over said passage way. The said passage way must be kept securely bridged by the person who owns the adjoining lands, and must be kept in good repair by said owner. Said bridge shall not be placed more than one foot above the level of the roadway. The approaches to the bridges over said passage way must also be kept in good repair by said owner.

1889, 15th Ses. p. 33.

CHAPTER XLVII.

TOLL ROADS.

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LEASING ROADS.

Section 1231. Commissioners May Lease Certain Roads:

Whenever a county road in any county in this state is so located that there is little or no local labor along the line or in the vicinity of said road, the board of county commissioners of the county where such road or any portion of the same is, or may hereafter be located, is authorized to lease such road, or any portion of the same,

to any person or corporation to open, improve, and keep the same in repair for a period not exceeding five years, with the right in consideration thereof to collect and receive tolls for travel thereon in the manner provided in this chapter.

1887 R. S. Sec. 986; 1883, 12th Ses. p. 50.

Section 1232. Order to Lease. Notice of: Whenever it becomes expedient to lease a public road, or any specified section thereof, the county commissioners must make an order to that effect, specifying therein the termini thereof, and directing the clerk of the board of county commissioners to cause the same to be published in some newspaper published in the county if there be one, or if there be no newspaper published in the county, then in a newspaper of general circulation therein, for a period not less than four weeks, and in like manner to give notice therewith that sealed bids will be received at such clerk's office until a particular hour of a certain day thereafter, and not more than ten days after the expiration of the publication of such order and notice, for the leasing of such road.

1887 R. S. Sec. 987; 1883, 12th Ses. p. 51, Sec. 2.

Section 1233. What Order to Specify: The order of the commissioners must specify the number of gates to be placed on the road, the grade of the road, the materials for the construction thereof, and the period for which the same is to be let. The bid must specify the rates of toll which the bidder is willing to accept for putting and maintaining the road in condition according to the specifications in the order.

1887 R. S. Sec. 998; 1883, 12th Ses. p. 53, Sec. 13.

Section 1234. Bidders to Give Undertaking: No bids must be considered unless accompanied by an undertaking, executed by two or more sureties in the sum of two thousand dollars, to be void upon the condition that the bidder, if the lease is awarded to him, will, within ten days thereafter, enter into the contract for keeping the road, and give the undertaking to secure the performance thereof, as hereinafter provided.

1887 R. S. Sec. 988; 1883, 12th Ses. p. 51, Sec. 3.

Section 1235. Lease Awarded to Lowest Bidder:

Upon opening the bids, the lease must be awarded to the lowest bidder; but the county commissioners may, and it is their duty to reject, any or all bids when there appears sufficient cause therefor, and in such case they may subsequently re-advertise and let the same.

1887 R. S. Sec. 999; 1883, 12th Ses. p. 53, Sec. 14.

Section 1236. Contract for Lease Undertaking on: The contracts for the lease must be subscribed by the lessee and approved by the county commissioners and filed with the clerk of the board. At the time of filing the contract, the lessee must give an undertaking to the county in a sum to be fixed by the county commissioners, not less than two thousand and not more than ten thousand dollars, with two or more sufficient sureties, to be void upon the

condition that the lessee will faithfully perform the contract in relation to such road, and comply with the provisions of this chapter.

1887 R. S. Sec. 989; 1883, 12th Ses. p. 51, Sec. 4.

Section 1237. Qualifications of Sureties: The sureties, in an undertaking mentioned in the last section, must have the qualifications of bail upon arrest in civil actions, and must justify in like manner before the county commissioners or the clerk thereof.

1887 R. S. Sec. 990; 1883, 12th Ses. p. 51, Sec. 5. —Qualifications of bail upon arrest: Code Civil Proc. Sec. 3260.

Section 1238. Lessee Must Follow Specifications of Contract: The road leased under this chapter must be cleared of standing timber, and have a track for traveling of the width, and be kept in the condition, and the streams or other waters on the line thereof, must be bridged, or ferries established thereon and must be made of such grade and of such materials as the contract shall specify.

1887 R. S. Sec. 991; 1883, 12th Ses. p. 51, Sec. 6.

Section 1239. Conditions of Lease: The commissioners must insert in every contract with a lessee of a road leased under this chapter that the same must be cleared of standing timber for thirty feet in width of said road, and have a track in the center not less than sixteen feet wide, furnished and kept in good traveling condition, except where the cutting on said road is six feet or more deep on either side, where said track need not be more than ten feet wide, with turnouts of sixteen feet in width every quarter of a mile of such narrow track and of sufficient length to enable the teams traveling said road to pass each other conveniently, and that all streams and other waters on the line of such road be safely and securely bridged; they may also insert therein such condition for keeping the road open during the winter season, as they may deem reasonable or expedient.

1887 R. S. Sec. 1000; 1883, 12th Ses. p. 53, Sec. 15.

Section 1240. Leasing Road Does not Exempt from Road Labor: The granting of any lease or leases under this chapter must not release any person liable to road labor from the performance thereof on the county roads not leased, or from otherwise discharging the same in money in lieu of such labor.

1887 R. S. Sec. 1001; 1883, 12th Ses. p. 53, Sec. 16.

Section 1241. Toll Gates. Collection of Tolls: No toll must be collected for travel on such roads except at a gate, nor unless a sign-board be posted at such gate in full view of the travel on the road, with the rates of toll plainly printed or painted thereon. The lease must specify the number of gates that may be placed on the road, and the location thereof, and thereafter the number of such gates must not be increased; but the county commissioners, upon the application of the lessee, may, at any time, for good reasons, authorize the lessee to change the location of such gates, or any of them.

1887 R. S. Sec. 992; 1883, 12th Ses. p. 52, Sec. 7. Collection of tolls: See note to Sec. 1265.

Section 1242. Rates of Toll. Penalties : The rates of toll that the lessee may collect and receive must be specified in the lease, and none other must be charged; and any person who passes through a gate on such road without paying the toll legally chargeable thereat, or when traveling on such road goes around such gate, with intent to avoid the payment of such toll is liable to the lessee for three times the amount of such toll; and any lessee of such road, who, by himself, his agents or servants, collects or receives of any persons illegal toll for traveling on such road, is liable to such person for three times the amount of such toll.

1887 R. S. Sec. 993; 1883, 12th Ses. p. 52, Sec. 8.

Section 1243. Leased Road is a County Road: The road leased as provided in this chapter, is nevertheless to be deemed a county road, subject to the provisions of the lease.

1887 R. S. Sec. 994; 1883, 12th Ses. p. 52, Sec. 9.

PUBLIC ROADS: Toll roads are public roads, as much so as free public highways, subject to the statutory regulation as to the franchise of collecting tolls upon them.—*Blood v. Woods*, 95 Cal. 78, 30 Pac. 129; *Covington & L. Turnpike Road Co. v. Sandford*, 164 U. S. 578, 41 L. ed. 560; *Wood v. Truckee Turnpike Co.* 24 Cal. 474. Such public highway is wholly freed from the burden of tolls after the ex-

piration of the franchise especially when the company acquires an easement and not a fee in the land and the collection of tolls after the expiration of the franchise constitutes a public nuisance which can be abated at the instance of the state.—*State v. Hannibal & Ralls County Gravel Road Co.* (Mo.), 36 L. R. A. 457, 39 S. W. 910; see also *Virginia Canon Toll Road Co. v. People*, 22 Colo. 429, 37 L. R. A. 711, 45 Pac. 398.

Section 1244. Toll, When not Chargeable: No footman can be required to pay toll for traveling on such road, nor any person while traveling from one portion of his, or his employer's farm, to another, with or without any stock or vehicle, or in going to or returning from church, a funeral or an election.

1887 R. S. Sec. 995; 1883, 12th Ses. p. 52, Sec. 10.

Section 1245. Cancellation and Forfeiture of Lease: The county commissioners have authority, upon the application of the lessee, to cancel or modify the lease upon such terms as may be equitable and just; and the proper prosecuting attorney may maintain an action against the lessee in the name of the county to have such lease declared forfeited whenever the lessee fails or neglects to comply with the provisions thereof, and of this chapter.

1887 R. S. Sec. 996; 1883, 12th Ses. p. 52, Sec. 11.

Section 1246. Tolls Chargeable on What: Tolls are chargeable by the lessee upon the following items, or classes of persons, or property only:

1. Sheep and hogs;
2. Loose horses, mules, asses and cattle;
3. Man and riding animals and pack animals loaded;
4. Vehicles loaded or unloaded and drawn by one or more animals.

1887 R. S. Sec. 997; 1883, 12th Ses. p. 52, Sec. 12.

BICYCLES: Tolls for the use of a road by persons riding bicycles cannot

be charged under a statute allowing a charge of 2 cents per mile for "any vehicle or carriage drawn by two animals," and 1 cent per mile for "every vehicle or carriage drawn by one animal."—*Murfin v. Detroit & Erin Plank Road Co. (Mich.)*, 38 L. R. A. 198, 71 N. W. 1108; the court in this case says: "We think, however, that a distinction may be made between vehicles propelled by man and those depending up-

on animal power or mechanical motors for locomotion, and that this would not do violence to the act, which had always been construed to permit the use of highways by persons who did not depend upon some means of conveyance besides their own powers of locomotion.—See also *Gloucester & Salem Turnpike Co. v. Leppee (N. J.)*, 41 L. R. A. 457, 40 Atl. 681.

CONSTRUCTION OF TOLL ROADS.

Section 1247. Notice of and Application to Construct: A company proposing to construct a toll road through any part of a county, if all land necessary for the road bed and other purposes are not otherwise acquired as hereinafter provided, must publish a notice in some newspaper published therein, and if none, then in the newspaper nearest thereto, once in each week for six successive weeks, specifying the character of the road, the termini, and each town, city, or village through which it is proposed to construct it, and the time when the application hereinafter required will be made. After such notice is complete, on the day specified therein, application must be made to the board of commissioners of the county for authority to take the necessary land and to construct the road described in the notice.

1887 R. S. Sec. 1020.

Section 1248. Hearing the Application: On the hearing all residents of the county and others interested may appear and be heard. The board may take testimony, or authorize it to be taken by any officer of the county, and adjourn the hearing from time to time.

1887 R. S. Sec. 1021.

Section 1249. Application Granted when: If it appears to the board of commissioners that the public interests will be promoted thereby, a majority of all the members thereof may grant the application, and by order authorize the company to take the real property necessary, and appoint two road commissioners to lay out the road, who are disinterested either in the company or in any land sought to be taken or adjoining thereto. A copy of this order must be recorded in the county recorder's office before action under it is had.

1887 R. S. Sec. 1022.

Granting application when members of the board are interested: Sec. 1616.

Section 1250. Road in Two Counties. Commissioners: If the road extends into more than one county, the application must specify their names, and the board of commissioners of each of such counties must appoint road commissioners to act in their respective counties with the commissioner and surveyor of the company. The company must appoint one commissioner of like qualification as those appointed by the board of commissioners, and furnish a surveyor to accompany and act with them.

1887 R. S. Sec. 1023.

Section 1251. Duty of Road Commissioners: The road commissioners must take the oath of office, and view and lay out the road as in their judgment will best promote the public interest. They must hear all persons interested, and may take testimony; they may determine the breadth of the way, not exceeding one hundred feet, except where the company acquire a greater breadth by grant. They must make, sign, and certify an accurate survey and description of the route and of the land necessary for the road, buildings, and gates in each county, and record the same in the office of the county recorder thereof. When the breadth of the road is not fixed by the road commissioners, it may be fixed by the board of commissioners of the county.

1887 R. S. Sec. 1024.

Section 1252. Compensation of Commissioners, Map and Report: The company must pay to each road commissioner his expenses and four dollars a day for his services; cause their surveyor to make the map of the proposed road, which, when approved and certified by the road commissioners, must be filed with the report in the office of the clerk of the board of county commissioners and recorded.

1887 R. S. Sec. 1025.

Section 1253. Branches and Extensions: The directors of any such company may, with the written consent of the holders of two-thirds of the stock, proceed in the manner prescribed by the preceding six sections to construct branches to their road, or to extend it or alter any part of its route or branches.

1887 R. S. Sec. 1026.

Section 1254. Lands, how Acquired: Lands necessary for the purposes of the road or appurtenances may be acquired by purchase or condemnation. Lands within any highway may be granted by the board of commissioners or city authorities on such terms and for such sums as may be agreed upon.

1887 R. S. Sec. 1027.

Condemnation proceedings: Code
Civil Proc. Sec. 3841 et seq.

Section 1255. Damage Paid to Road Fund, When: When the road company desires the exclusive use of lands forming part of the highway, and such use is granted by the county commissioners, the damages received therefor are to be paid to the road fund of the county in which the same is situated.

1899, 5th Ses. p. 131, Sec. 15; 1891, 1st 1887, R. S. Sec. 1028.
Ses. p. 194, Sec. 14, amending laws of

Section 1256. Application, when Unnecessary: When the company has obtained all the lands necessary in any county, by purchase or agreement, the road may be constructed without making the application to the board of commissioners hereinbefore provided for; but before proceeding to do so an accurate survey of such part of the road must be made by a practical surveyor, signed and sworn to by the president and secretary, and recorded in the county

recorder's office; and if the road extends into another county, authority to construct the road there must first be obtained.

1887 R. S. Sec. 1029.

Section 1257. Protection of Orchards, Gardens, etc.:

No such road must be laid out through any orchard of four years growth, to the injury of the fruit trees, or any garden of four years cultivation, or any dwelling house or building connected with a dwelling house or any yard or inclosure necessary thereto, without the consent of the owner.

1887 R. S. Sec. 1030.

Section 1258. Bridging Streams: The road company may bridge any stream or river on the route of their road, when not within the limits prescribed by law for the erection and maintenance of any other bridge and in bridging streams used for rafting lumber, the bridge must be so constructed as not to prevent or endanger the passage of any raft forty feet in width.

1887 R. S. Sec. 1031.

Section 1259. Plank Road Company, Restriction on: No plank road company shall construct its road on the road of another company, except in case of crossings, without consent of the latter.

1887 R. S. Sec. 1032.

Section 1260. Construction of Roads: Every such road must be laid out at least fifty feet wide. The track of plank roads must be constructed eighteen feet wide, of timber, plank or other hard material. The track of turnpikes must be bedded with stone, gravel, or such other hard material found on the line thereof, to the width of eighteen feet, and faced with broken stone or gravel. The common wagon road must be graded at least twelve feet in width, and so constructed with necessary turnouts as to permit vehicles to pass each other conveniently. All the roads must be ditched on the sides when practicable, and have proper and necessary sewerage, and be so constructed that vehicles may pass on and off the track at all intersections of roads.

1887 R. S. Sec. 1033.

Section 1261. May Relay Plank Road with what: Every company that has once laid their road with plank may relay it or any part of it with broken stone, gravel, or other hard material whereby they keep a good, substantial road.

1887 R. S. Sec. 1034.

Section 1262. Guide Posts: A guide post must be erected at every place where the road is intersected by a public road, with an inscription showing the name of the place to which such intersecting road leads, in the direction to which the name on the guide post points.

1887 R. S. Sec. 1035.

Section 1263. Completion of Road or Portion Thereof. Inspection:

When the road or three consecutive miles thereof, is completed, the road overseer or other person thereto specially appointed by the board of commissioners of the county, must inspect the road when requested, and if satisfied that the road conforms to the requirements of the law, must certify to the facts and file the certificate in the office of the county recorder, for such service four dollars per day must be by the company paid to the inspector or overseer. When only three miles of any plank road are completed, if it is not the entire road, tolls must not be collected thereon for more than one year, unless the road or five consecutive miles are completed within the year.

1887 R. S. Sec. 1036.

Section 1264. Erection of Toll Gates: When the certificate of completion is filed, toll gates may be erected and tolls collected. No toll gate, toll house, or other building must be put up within ten rods of the front of any dwelling house, barn or outhouse, without written consent of the owner thereof.

1887 R. S. Sec. 1037.

Section 1265. Rate of Tolls, how Fixed. License

Tax: The board of county commissioners must fix and regulate the rates of toll for all franchises granted under the provisions of this chapter within the limits of their respective counties, having due regard to the cost of construction, magnitude of structure and expenses incident thereto, and in keeping the same in good repair. The board of commissioners must also tax such sum as may appear reasonable, not less than twenty-five dollars nor more than two hundred dollars per annum, for each license granted; and the person or parties to whom such license is granted, must pay to the county treasurer the tax for one year in advance, taking his receipt therefor, and upon the production of such receipt the clerk of the board of commissioners must issue such license, with a statement of the rates of toll as fixed, under seal of the board of commissioners.

1887 R. S. Sec. 1038.

Disposition of tax: Sec. 1540.

LEGISLATIVE POWER TO FIX

TOLLS: Private property is subject to public regulation when it is subject to a public use.—*Munn v. Illinois*, 94 U. S. 113, 24 L. ed. 77. In this case the court says, "Property becomes clothed with public interest when used in a manner to make it of public consequence and affect the community at large." When such use exists, a business becomes subject to legislative control in all respects necessary to protect the public against danger, injustice, and oppression.—*Georgia R. & Bkg. Co. v. Smith*, 128 U. S. 174, 32 L. ed. 377, and a charter specification of rates which it shall be lawful for a turnpike company to charge, subject to a certain increase or decrease if necessary

to keep the company's dividends within certain limits, does not constitute an irrevocable contract between the state and the corporation, but is merely an indication that such rates are supposed to be reasonable, without precluding the subsequent exercise of legislative power to change the rates, and a reduction of the rates of a turnpike company will not constitute a deprivation of its property without due process of law where it does not appear that the dividends will be thereby reduced, or, if so, to what extent.—*Winchester & Lexington Turnpike Road Co. v. Croxton (Ky)*, 33 L. R. A. 177, 34 S. W. 518. A statute requiring roads to conform to rates fixed by a commission does not take property without due process of law.—*Stone v. Farmers' Loan & Trust Co.* 116 U. S. 307, 29 L.

ed. 636; *Chicago, M. & St. P. R. Co. v. Becker*, 32 Fed. Rep. 849; *Chicago & N. W. R. Co. v. Dey*, 35 Fed. Rep. 866, 1 L. R. A. 744, but if a statute establishing a tariff of rates is so unreasonable as to destroy the value of the property it may be held unconstitutional as taking the property without due process of law.—*St. Louis & S. F. R. Co. v. Gill*, 156 U. S. 649, 39 L. ed. 567; *Reagan v. Mercantile Trust Co.* 154 U. S. 413, 38 L. ed. 1028.

RIGHT TO COLLECT TOLL: The right to collect tolls on bridges, roads, etc., is a franchise. It is a sovereign prerogative and vests in an individual

only by virtue of legislative grant made directly or by a subordinate body to whom the power is delegated.—*Truckee & T. Turnpike Road Co. v. Campbell*, 44 Cal. 89; *Blood v. Woods*, 95 Cal. 78, 30 Pac. 129. A right to exact tolls on a turnpike road cannot be established by usage.—69 Mich. 115, 36 N. W. 739; but in *Panton Turnpike Co. v. Bishop*, 11 Vt. 198, it was held where persons were permitted for more than twenty years to enjoy the right of taking toll on a turnpike without molestation they are deemed to have a right equivalent to an express grant.

Section 1266. Applicant for License to Give Bond:

Every company applying for a license to keep a toll road, must, before the same is issued, enter into a bond with one or more sureties, to be approved by the clerk of the board of commissioners in any sum not less than one thousand, nor more than ten thousand dollars, conditioned that such company will keep said road in all respects according to law; and if default at any time be made in the condition of such bond damages not exceeding the penalty may be recovered by any person aggrieved, before any court having competent jurisdiction.

1887 R. S. Sec. 1039.

Section 1267. Abandonment of Road: Whenever the holders of two-thirds of the stock consent, the directors of any company may abandon the whole or any part of their road at either or both ends, by written surrender thereof, attested by their seal, and acknowledged by the president and secretary as a deed or grant is acknowledged, and recorded in the recorder's office of each county where the surrendered road lies; thereafter the surrendered road belongs to the road districts in which it lies, but the company may continue to take toll on any three consecutive miles in length not so surrendered.

1887 R. S. Sec. 1040.

Section 1268. County may Purchase Toll Road:

At any time within five years from filing the certificate of completion of any road constructed under the provisions of this chapter, the county within which the road or any part thereof is located, may purchase the same at a fair cash valuation, to be fixed by seven commissioners, all disinterested persons, three to be appointed by the board of commissioners of the county, three by the owner of the road, and the seventh by the probate judge; these must estimate the fair cash value of the road and make report thereof under oath to the board of commissioners. If within three months after filing the report, the appraised value thereof is tendered on behalf of the county to the owner of the road or his authorized managing agent, the right of the owner to take tolls on the road is terminated, and the road becomes the property of the county.

1887 R. S. Sec. 1041.

VALUE, HOW DETERMINED: A

bridge is a peculiar kind of property, and seldom has a market value. The

value of its capital stock may, and generally does, indicate with some accuracy, the value of its franchises. Hence, in an action against a county for taking a bridge, the cost or value of the structure, the amount of net tolls, and the market value of its capital stock, are all elements to be considered in ascertaining the value

of the bridge and its corporate franchises. No one of these elements, standing alone, would in all cases furnish a test; considered together, they will seldom fail to lead to a satisfactory result.—*Mifflin Bridge Co. v. County of Juniata (Pa.)*, 13 L. R. A. 431; *Montgomery County v. Schuylkill Bridge Co.* 110 Pa. 54, 20 Atl. 407.

Section 1269. How Appraisement and Award is Made:

A majority of the commissioners mentioned in the preceding section constitutes a quorum, and the concurrence of a majority in making the estimate and award is binding upon the road owner if approved by the board of commissioners. The commissioners must make their report within thirty days after their appointment, and if approved the tender of the amount of the appraisement and award must be made by the county treasurer; whether the owner conveys the road to the county or not, the report and tender operate as a conveyance to the county of the road and all its incidents and appurtenances.

1887 R. S. Sec. 1042.

USE OF TOLL ROADS.

Section 1270. Persons Exempt from Tolls: The following persons, and none other, are exempt from payment of toll on wagon, turnpike, or plank roads:

1. Persons going to or from any funeral, and all funeral processions;
2. Troops in actual service of the state, or of the United States;
3. Persons going to or from the court house in obedience to a subpoena in a criminal action;
4. Persons living within a mile of any gate by the most usually traveled road may pass it at one-half toll, when not engaged in the transportation of others or the property of others;
5. Farmers living on their farms within one mile of any gate by the most usually traveled road may pass free when going to or from their work on such farms;
6. School children attending school within three miles of their parents or boarding houses.

1887 R. S. Sec. 1050.

Section 1271. Inspection of Road, Notice to Repair; Neglect:

Every road overseer of the district to whom complaint in writing is made that any part of a wagon, turnpike, or plank toll road in his county or district, or any part of such road, the gate nearest to which is in his county or district is out of repair, must examine it without delay and give notice of the defect, particularly describing the same, to the person attending the gate nearest thereto; if the necessary repair is not made or defect remedied within three days after such notice is given, the road overseer may order such gate to be thrown open.

1887 R. S. Sec. 1055.

Section 1272. Penalty for Closing Gate Opened by Overseer: A gate so ordered to be thrown open must not be shut nor any toll collected thereat until the road overseer ordering it open, grants a certificate that the road is in sufficient repair, and that the gate ought to be closed. The company and their gate keeper or other employee, violating or permitting the violation of this section, or the order made under the preceding section, are each liable in a penalty of twenty-five dollars for each offense, to be recovered by the party aggrieved.

1887 R. S. Sec. 1056.

Section 1273. Notice of Defects in Road. Duty of Licensee: Every road overseer who discovers a defect in any toll road in his county or district, or a gate placed in a situation contrary to law must give written notice thereof to one or more of the directors or managing agents of the company, requiring the defective road to be repaired or the gate to be removed, within a specified time; and may order that in the meantime such gates as he specifies be thrown open.

1887 R. S. Sec. 1057.

Penalty for not obeying notice:
Penal Code, Sec. 5110.

Section 1274. Fees of Road Overseer: The road overseer complaining to the prosecuting attorney, or who makes inspection and discovers defects in the road, is entitled to three dollars for each day's services in inspecting the road or necessarily expended in prosecuting the action therefor, to be paid in case of conviction, as costs. When no action is had, but repairs are made, or gate removed, on the inspection and requirement of the road overseer, the toll gatherer nearest the road so out of repair, or the gate to be moved, must pay the fees hereinbefore specified out of the tolls collected; if he refuse to pay the same, they may be recovered by action with costs.

1887 R. S. Sec. 1059.

CHAPTER XLVIII.

PUBLIC FERRIES AND TOLL BRIDGES.

Section.

GENERAL PROVISIONS.

- 1275. Application to construct, to whom made.
- 1276. Authority to construct. Notice required.
- 1277. Duty of commissioners upon granting authority.
- 1278. License tax and rate of tolls, how fixed.
- 1279. Annual report of owner of bridge or ferry.
- 1280. Examination to determine rate of tolls.
- 1281. Fixing annual license tax.
- 1282. Conditions of bond of licensee.
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- 1285. Bridge or ferry within one mile of another.
- 1286. Acquisition of lands for bridge or ferry.
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TOLL BRIDGES.

- 1290. Notice of application to construct.
- 1291. Hearing application.
- 1292. Granting application. Records.
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- 1294. Use of highway.
- 1295. Railings to bridge. When may collect tolls.
- 1296. Persons exempt from tolls.
- 1297. Penalty for avoiding tolls.
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Section.

PUBLIC FERRIES.

1299. Notice and application for leave.

1300. Proceedings of board of commissioners.

Section.

1301. Rules and regulations governing ferries.

1302. Disposition of penalties.

GENERAL PROVISIONS.

Section 1275. Application to Construct, to Whom Made: When authority to construct a toll bridge or to erect and keep a ferry over waters dividing two counties is desired, application must be made to the board of commissioners of that county situated on the right bank descending such river, creek, or slough.

1887 R. S. Sec. 1070; Compiled Laws 1875, p. 863.

Application when commissioners interested: Sec. 1616.

Section 1276. Authority to Construct. Notice Required: The board of commissioners must not grant authority to construct or erect a toll bridge or ferry until the notice of such intended application has been given as respectively required in this chapter.

1887 R. S. Sec. 1071.

Section 1277. Duty of Commissioners upon Granting Authority: The board of commissioners granting authority to construct a toll bridge or to keep a public ferry, must at the same time:

1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the bridge or ferry for the benefit of the county and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof;

2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three nor over one hundred dollars per month, payable annually;

3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent. on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value together with the repairs and maintenance thereof for any succeeding year;

4. Make all necessary orders relative to the construction, erection, and business of licensed toll bridges or ferries which they have by law the power to make. The board of commissioners may, at any time they see fit, authorize fords across any water within any distance of any licensed toll bridge or ferry.

1887 R. S. Sec. 1072.

Collection of tolls: See note to Sec. 1265.

Section 1278. License Tax and Rate of Tolls, how Fixed: The license tax and rate of toll fixed as provided in the preceding section may be increased or diminished, at any time when it is shown to the satisfaction of the board of commissioners that the receipts from tolls any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with

the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the board of commissioners must not exceed ten per cent. of the tolls annually collected.

1887 R. S. Sec. 1073.

Regulation of tolls: See note to Sec. 1265.

Section 1279. Annual Report of Owner of Bridge or Ferry: Every owner or keeper of a toll bridge or ferry must report annually to the board of commissioners from which his license is obtained, under oath, the following facts:

1. The actual cost of the construction or erection, and equipment of the toll bridge or ferry;
2. The repairs made during the preceding year, and the actual cost thereof;
3. The expense of labor and hire of agents, and other costs necessarily incurred in and about the conduct of their business;
4. The amount of tolls collected; and,
5. The estimated actual cash value of the bridge or ferry, exclusive of the franchise.

1887 R. S. Sec. 1074.

Section 1280. Examination to Determine Rate of Tolls: Whenever the board of commissioners are about to fix the license tax and rate of tolls on a bridge or ferry they must make inquiry into the present actual cash value and the cost of all necessary repairs and maintenance thereof, and for that purpose may examine, under oath, the owner or keeper of the same, and other witnesses, and the assessed value of the bridge or ferry on the assessment roll of the county.

1887 R. S. Sec. 1075.

Section 1281. Fixing Annual License Tax: When the cost of construction or erection and equipment of the bridge or ferry, or the fair cash value thereof, together with the cost of needed repairs and the conduct and maintenance of the same, is ascertained and fixed for the preceding year, the board must on such ascertained amount fix the annual license tax rate of tolls, and the amount of the penal bond, and direct a license to be issued by the clerk.

1887 R. S. Sec. 1076.

Section 1282: Conditions of Bond of Licensee: The bond required of the owner or keeper of the toll bridge or ferry, must be in the sum fixed by the board of commissioners between one thousand and ten thousand dollars, with one or more sureties, and conditioned that the toll bridge or ferry will be kept in good repair and condition, and that the keeper will faithfully comply with the laws of the state and all legal orders of the board of commissioners regulating the same, and pay all damages recovered against him by any person injured or damaged by reason of delay at or defect in such bridge or ferry, or in any manner resulting from a non-compliance with the laws or lawful orders regulating the same. The bond must be ap-

proved by the board and filed with the clerk of the board of commissioners.

1887 R. S. Sec. 1077.

Section 1283. License, where Paid. Division of Money:

The license tax of a ferry or bridge connecting two counties must be paid to the treasurer of the county granting it, and the license issued by the auditor thereof; but the treasurer of such county must pay to the treasury of the county in which the other end or landing of the bridge or ferry is located, one-half the sum so received annually, or the auditor may issue the license on filing with him receipts for their respective halves of the tax taken from the treasurer of each of the two counties.

1887 R. S. Sec. 1078; Compiled Laws 1875, p. 863.

Section 1284. Probate Judge acts, when: When a commissioner is interested in an application to erect, construct, or take tolls, or alter tolls on a bridge or ferry, the probate judge of the county must act in his stead.

1887 R. S. Sec. 1079.

Section 1285. Bridge or Ferry Within One Mile of Another:

No toll bridge or ferry must be established within one mile immediately above or below a regularly established ferry or toll bridge, unless the situation of a town or village, the crossing of a public highway, or the intersection of some creek or ravine renders it necessary for public convenience. In addition to the public notice hereinafter required, notice of intention to apply for authority to erect a toll bridge or ferry, as in this section provided, must be served upon the proprietor of the ferry or toll bridge already established at least ten days prior thereto, giving the time and place and grounds of such application.

1887 R. S. Sec. 1080.

Section 1286. Acquisition of Lands for Bridge or Ferry:

When there are lands necessary for the construction, erection or use of such bridge or ferry which cannot be procured by agreement between the owner or corporation and the land owner, the right of way and all other lands necessary for the use and construction or erection thereof may be acquired by condemnation.

1887 R. S. Sec. 1081.

Condemnation proceedings: Code
Civil Proc. Sec. 3841 et seq.

Section 1287. Must Post Rate of Tolls. Every licensed toll bridge or ferry must have the rates of toll as fixed by the board of commissioners, printed or written, posted up in some conspicuous place on or near the bridge or ferry.

1887 R. S. Sec. 1082.

Section 1288. Disposition of License Tax: The proceeds of the license tax on ferries and toll bridges must be paid into the county treasury for the use of roads and highways, or may be used by the board of commissioners at any time in the purchase of toll roads and toll bridges.

1887 R. S. Sec. 1083.

Is placed in current expense fund:
Sec. 1540.

Section 1289. Banks to be Kept in Good Order. Penalty: All ferry and toll bridge keepers must keep the banks of the streams or waters at the landings of their ferries and bridges graded and in good order for the passage of vehicles. For every day compliance herewith is neglected twenty-five dollars is forfeited, to be collected for the use of the road fund of the county.

1887 R. S. Sec. 1084.

TOLL BRIDGES.

Section 1290. Notice of Application to Construct: Every applicant for authority to construct a toll bridge must publish a notice in at least one newspaper in each county in which the bridge or any part of it is to be, or if no paper is published therein, in an adjoining county once in each week for six successive weeks, specifying the location, the length and breadth of the bridge, and the time at which the application hereinafter required will be made. After notice is given, application must be made to the board of commissioners of the proper county, at any meeting specified in the notice, for authority to construct it.

1887 R. S. Sec. 1090; Compiled Laws 1875, p. 867.

Section 1291: Hearing Application: On the hearing, any person may appear and be heard. The board may take testimony or authorize it to be taken by any judicial officer of the county; and it may adjourn the hearing from time to time. A copy of the articles of incorporation, certified by the secretary of state or by the clerk where they are filed, must be attached to and filed with the application if made by a corporation.

1887 R. S. Sec. 1091.

Section 1292. Granting Application. Records: If the board are of opinion that the public interests will be promoted thereby, it may grant the application by an order entered in its minutes, and particularly describing the bridge. The applicant must cause a certified copy of the order, with a copy of the application to be recorded in the office of the recorder of the county before proceeding under it.

1887 R. S. Sec. 1092.

Section 1293. Board May Make Conditions: The board of commissioners may, at the time of granting authority to construct a toll bridge, by order, require the bridge to be constructed within a certain time, to be of a certain width, character, or description and to be constructed of certain materials, which order must be complied with by the owner or corporation constructing the same before license to take tolls is issued.

1887 R. S. Sec. 1093.

Section 1294. Use of Highway: The corporation or bridge owner may use, in such manner as prescribed by the board, so

much of any public road on either side of the stream or waters as may be necessary for constructing and maintaining the bridge and toll houses.

1887 R. S. Sec. 1094.

Section 1295. Railings to Bridge. When May Collect Tolls. Every bridge erected under these provisions must have good and substantial railings or sidings, at least four and a half feet high. When a bridge is completed, and a certificate that it is so, and is safe and convenient for the public use, is signed by the chairman of the board of commissioners, and filed in the county recorder's office, in the county or counties in which it is located, the owner may erect a toll gate at such bridge and require such tolls as the board of commissioners of the county or counties from time to time prescribe. A license therefor must be issued by the auditor of the county on giving the necessary bond and paying the license tax fixed therefor.

1887 R. S. Sec. 1095.

Section 1296. Persons Exempt From Toll: Any person going to or from a funeral, school, or court, which by law he is required to attend as a witness in a criminal case, or performing highway labor, is exempt from the payment of tolls.

1887 R. S. Sec. 1096.

Section 1297. Penalty for Avoiding Tolls: Any person liable to pay toll, forcibly or fraudulently passing the gate of a toll bridge without paying the toll is liable to a penalty of ten dollars in addition to the damages caused, to be recovered by the owner.

1887 R. S. Sec. 1097.

Section 1298. County May Purchase Toll Bridge: Within the same time, in like manner, and to the same effect as toll roads are purchased under the provisions of the last chapter, the county or counties, jointly acting, in which the same is situated, may purchase a toll bridge constructed under the provisions of this chapter.

1887 R. S. Sec. 1098.

Purchasing toll roads: Sec. 1268.

PUBLIC FERRIES.

Section 1299. Notice and Application for Leave: Every applicant for authority to erect and take tolls on a public ferry must publish a notice in at least one newspaper in each county in which the ferry is or touches, or if there is no newspaper published therein, then in one published in an adjoining county for four successive weeks, specifying the location and the time and place, when and where the application will be made. After notice is given, application must be made in writing, under oath, to the board of commissioners of the proper county, the landings of the proposed ferry must be described, and the names of the owners thereof given, if known; and if the applicant is not the owner of the land, that notice of the application has been served on the owner thereof at least ten days prior to the application.

1887 R. S. Sec. 1105; Compiled Laws 1875, p. 867.

Section 1300. Proceedings of Board of Commissioners: At the hearing, proof of giving the notice as required by the preceding section, must be made, and any person may appear and contest the application. If the board finds that the ferry is either a public necessity or convenience, and that the applicant is a suitable person, authority to erect and take tolls on the ferry may be granted to him.

1887 R. S. Sec. 1106.

Section 1301. Rules and Regulations Governing Ferries: The board of commissioners may make all needful rules and regulations for the government of ferries and ferry keepers, prescribing:

1. How many boats must be kept, their character, and how propelled;
2. The number of hands, boatmen or ferrymen to be employed, and rules for their government;
3. How many trips to be made daily;
4. When and under what circumstances to make trips in the night time;
5. Who must be ferried free of toll;
6. In what cases of danger or peril not to cross;
7. Penalties for violation of regulations;
8. In case of steamboats, the rate of speed;
9. The method of and preference in loading and crossing; and.
10. How and by whom action must be brought to recover penalties.

1887 R. S. Sec. 1107.

Section 1302. Disposition of Penalties: Penalties recovered under this chapter must be paid to the county treasury for use of the general road fund of the county.

1887 R. S. Sec. 1108.

CHAPTER XLIX.

MISCELLANEOUS PROVISIONS RELATING TO TOLL ROADS, BRIDGES AND FERRIES.

Section.

1303. Franchises deemed real estate.
 1304. Franchises liable for debts.
 1305. Interest in franchise may be attached.
 1306. Purchaser at sheriff's sale must execute bond.

Section.

1307. Penalty for failure to pay taxes and repair property.
 1308. Right of way, extent of.
 1309. Damages, remedy for. Lien for tolls.
 1310. Keeping without license, penalty for.

Section 1303. Franchises Deemed Real Estate: For all purposes connected with the collection of debts, dues or demands, or the enforcement of obligations, a franchise for the building of bridges, the construction of roads or the maintenance of ferries is deemed real property, and controlled by the rules governing the same.

1887 R. S. Sec. 1120; 1867, 4th Ses p. 64.

Section 1304. Franchises Liable for Debts: All rights or franchises to build, construct, or maintain roads, ferries or bridges, and charge toll thereon, or receive any compensation from the public for the use of the same, are subject in like manner as real property, to the payment or satisfaction of any judgment rendered in a suit to enforce the collection or satisfaction of any debt due, demand or obligation heretofore contracted, or which may hereafter be contracted.

1887 R. S. Sec. 1121; 1867, 4th Ses p. 64.

Section 1305. Interest in Franchise May be Attached: All right, title or interest claim, property or demand, in and to such franchise, road, bridge or ferry, may be attached in the same manner in which real property may be attached in any suit against any persons to whom said described franchises have been granted or conveyed, and the right, title and interest, property, claim and demand of said person may be levied upon and sold under execution, to satisfy any such judgment or decree, in the manner in which real property is levied upon and sold under execution, and subject to the same rules of redemption.

1887 R. S. Sec. 1122; 1867, 4th Ses. Civil Proc. Sec. 3299 et seq.
p. 64. Execution on real property: Code
Attachment of real property: Code Civil Proc. Sec. 3538 et seq.

Section 1306. Purchaser at Sheriff's Sale Must Execute Bond: In all cases where the person to whom any such right or franchise was originally granted, was required to execute any bond or undertaking for the performance of any act or acts connected with said franchise, the party or parties purchasing at sheriff's sale must, before the confirmation of said sale by the proper court, execute a similar bond or undertaking, to be approved and filed in like manner as the original.

1887 R. S. Sec. 1123; 1867, 4th Ses p. 64.

Section 1307. Penalty for Failure to Pay Taxes or Repair Property: If any person licensed to keep a toll road, bridge, or ferry, fails to pay the taxes assessed thereon when due or does not provide or keep the same in good and complete repair, necessary for the safe travel and conveyance of persons and property, or abandons the same for the space of sixty days, the board of commissioners of the proper county, on complaint being made in writing, must summon the person licensed to keep such road, trail, bridge, or ferry, to show cause why such license should not be revoked, and the board must decide thereon according to the testimony adduced, which decision is subject to appeal as in other cases, to the district court.

1887 R. S. Sec. 1129; Compiled Laws 1875, p. 870, Sec. 13.

Section 1308. Right of Way, Extent of: The right to construct and keep a toll road, bridge or ferry granted by the board of commissioners under the provisions of this title may be made exclusive for one mile on each side of the line of the road or of the landing of the bridge or ferry.

1887 R. S. Sec. 1130; Compiled Laws 1875, p. 864.

Section 1309. Damages, Remedy for. Lien for Tolls: Any damages sustained by any person or persons in crossing any toll bridge or ferry, or in traveling upon any toll trail or toll road, upon which toll gates are established or tolls collected, caused by the neglect of the owners thereof either by an unskillful management or failure to keep such bridge, ferry, toll road or toll trail in good repair for the accommodation of the traveling public are a lien upon said bridge, ferry, or toll road to be enforced by action; and the tolls allowed by law to be collected upon any toll road, ferry or bridge, are a lien upon any property passing over the same to be collected as other liens; but no damages shall accrue at any time when tolls are not charged.

1887 R. S. Sec. 1131; Compiled Laws 1875, p. 865.

Section 1310. Keeping Without License, Penalty for: Any and all persons who keep, or attempt to keep any toll road, bridge or ferry, and receive toll or pay therefor, without first obtaining a license for the same, must pay a fine of not less than fifty dollars for each offense, for the benefit of the common school fund, and for which complaint may be made by any aggrieved party, before any justice of the peace having jurisdiction.

1887 R. S. Sec. 1128; Compiled Laws 1875, p. 869.

TITLE VII.

REVENUE.

- Chap. L. Property Liable to Taxation.
- Chap. LI. Definitions.
- Chap. LII. Levy of Taxes.
- Chap. LIII. Assessment of Property.
- Chap. LIV. Equalization of Taxes.
- Chap. LV. Duties of County Auditor in Relation to Revenue.
- Chap. LVI. Collection of Property Taxes.
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- Chap. LVIII. Licenses.
- Chap. LIX. Settlement With Auditor.
- Chap. LX. Miscellaneous Provisions.

CHAPTER L.

PROPERTY LIABLE TO TAXATION.

Section.

1311. All property liable, except what.

Section.

1312. Exempt property.

Section 1311. All Property Liable Except What: All property in this state, not exempt under the laws of the United States, including interests in state lands to the extent of the amount paid thereon and of the value of all improvement, is subject to taxa-

tion as in this title provided; but nothing herein contained shall be construed to require or permit double taxation.

1901, 6th Ses. p. 233, Sec. 1.

Duplicate taxation prohibited: Const. Art. VII, Sec. 5.

DOUBLE TAXATION: Although property was assessed in the county of A. in 1889, the assessment of the same property in the county of W., in the same year was not double taxation, but a penalty imposed by law for refusal to furnish the statement required by Sec. 1429 Rev. St. 1887 (1322 of this Code).—*Erwin v. Hubbard*, Assessor (Idaho), 37 Pac. 274. Taxation of real estate to its

full value and also of mortgages thereon, does not constitute double taxation.—*Judge v. Spencer*, 15 Utah, 242, 48 Pac. 1097; see also *Pacific Nat'l Bank of Tacoma v. Pierce County*, 20 Wash. 675, 56 Pac. 936. Where the capital stock of a corporation has been assessed and the tax paid, and its corporate stock is not in the possession of the corporation, it is not liable to taxation therefor.—*San Francisco v. Spring Valley Water Works*, 63 Cal. 524; *People v. Nat. Gold Bank*, 51 Cal. 508.

Section 1312. Exempt Property: The following is exempt from taxation:

First.—All property used exclusively for school purposes, and such as may belong to the United States, this state, or to any county or municipal corporation or school district within this state;

Second.—Churches, chapels and other buildings, with the lots or ground appurtenant thereto and used therewith, belonging to any church organization or society, and used for religious worship from which no rent is derived, with their furniture and equipments; and hospitals used for benevolent purposes with the lots of ground appurtenant thereto and used therewith from which no rent is derived, with their furniture and equipments; also public cemeteries;

Third.—Buildings and parts of buildings owned and used by the order of Masons or Odd Fellows, or by any other benevolent or charitable society exclusively for the purpose of its order, and their furniture and equipments;

Fourth.—The property of resident widows and orphan children not to exceed the amount of one thousand dollars, to any one family when their total assessment is less than five thousand dollars;

Fifth. Growing crops.

Sixth.—Capital stock of corporations to the extent that the same is represented by property of the corporation which has been assessed.

Seventh.—Public and private libraries.

Eighth.—Tools of a mechanic, farmer, miner, prospector and the household goods of the head of a family or householder and the farming implements and machinery of farmers, not exceeding in value four hundred dollars;

Ninth.—Possessory rights to public lands;

Tenth.—All dues and credits secured by mortgage, trust deed or other lien.

Eleventh.—Mining claims not patented; but machinery, property and improvements upon or appurtenant to mining claims shall not be exempt;

Twelfth.—All irrigating canals and ditches and water rights appurtenant thereto, when the owner or owners of said irrigating canals and ditches use the water thereof exclusively upon land or lands owned by him, her or them: *Provided*, In case any water be sold or rented

from any such canal or ditch, then, in that event, such canal or ditch shall be taxed to the extent of such sale or rental.

1899, 5th Ses. p. 220, Sec. 1; 1895, 3d Ses. p. 47, amending laws of 1893, 2d Ses. p. 150, amending laws of 1887 R. S. Sec. 1401; twelfth subdivision added, act of 1897, 4th Ses. p. 77.

Property of United States, the state, counties, towns, cities and other municipal corporations and public libraries are exempt: Const. Art. VII, Sec. 4.

Salisbury v. Lane (Idaho), 63 Pac. 383.

Legislature may allow exemptions: Const. Art. VII, Sec. 5.

CONSTRUCTION: Laws making exemptions from taxation, being in derogation of the general rule, must be strictly construed; doubt is fatal to the exemption.—New Orleans v. Robira, 42 La. Ann. 1098, 11 L. R. A. 141, 8 So. 402; Atlantic & P. R. Co. v. Lesueur (Ariz.), 2 Inters. Com. Rep. 189, 1 L. R. A. 244. Contra as affects schools and colleges.—See Yale University v. New Haven, 71 Conn. 316, 43 L. R. A. 490; 42 Atl. 87.

UNITED STATES AND STATE LANDS: Public lands of the United States become private property and liable to taxation and sale for non-payment of taxes after they have been entered at the land office and a certificate of entry obtained, although no patent may have issued to the purchaser.—Witherspoon v. Duncan, 4 Wall. 210; Astrom v. Hammond, 3 McLean, 107; Carroll v. Perry, 4 Id. 25. Lands belonging to the state are exempt from taxation and no title to the same can be acquired by tax deed.—State v. Stevenson (Idaho), 55 Pac. 886; yet bonds of the state held by individuals are private property and are taxable.—People v. Home Ins. Co. 29 Cal. 534. Lands belonging to a city are exempt from taxation by a statute exempting the property of municipal corporations.—City of Springville v. Johnson, 10 Utah, 351, 37 Pac. 577. The constitutional exemption from taxation of public property used exclusively for any public purpose does not extend to real property owned and leased by a private party, although it is by contract with the public authorities used as a public market house or place, with an agreement that it shall be exempt from taxation.—State v. Cooley, 62 Minn. 183, 29 L. R. A. 777, 64 N. W. 379. The exemption of property from taxation is beyond the power of a town in the absence of constitutional legislative authority.—McTwiggan v. Hunter, 19 R. I. 265, 29 L. R. A. 526, 33 Atl. 5.

Exemption of state lands: Sec. 477.

CHARITABLE INSTITUTIONS: A corporation organized for charitable

purposes, and which devotes all of its income to the payment of the current expenses and the relief of its members and their families, is a charitable institution within the meaning of the exemption laws.—Portland Hibernian Ben. Soc. v. Kelly, 28 Ore. 173, 42 Pac. 3; but a mere intention of a corporation to use its property for charitable purposes at some future time is not sufficient to entitle it to exemption.—Montana Cath. Missions, S. J. v. Lewis and Clarke County (Mont.), 35 Pac. 2.

CHURCH AND SCHOOLS: The constitutional provision that taxation must be uniform is not violated by an act exempting church and school lands.—High v. Shoemaker, 22 Cal. 363; People v. McCreery, 34 Cal. 432. Buildings and property used exclusively for school purposes, places of religious worship, or burial, and all charitable institutions, providing the property be not used or leased for the purpose of private or corporate profit or income, hospitals or infirmaries, whose object is charity, are exempt from taxation, though such institutions take pay from patients who can pay.—State v. Board of Assessors, of Parish of Orleans (La.), 26 So. 872; but property used by a church as a residence for the minister, is not exempted from taxation, under a statute exempting from taxation all buildings and property used exclusively for places of public worship.—Id. But see Trustees of Philip's Academy v. Inhabitants of Andover (Mass.), 55 N. E. 841. See also President, etc., of Harvard v. Assessors of Cambridge (Mass.), 55 N. E. 844. A statute exempting college property from taxation in accordance with a well settled and long established public policy, is to be construed reasonably so as to give full effect to the policy declared, as well as to avoid abuse and frustrate evasion and is not within the rule of strict construction.—Yale University v. New Haven, 71 Conn. 316, 43 L. R. A. 490, 42 Atl. 87. An institution of purely public charity, such as the American Sunday School Union, is not exempt from taxation on property used in carrying on a book store where its own publications and other standard works are sold, though the profits of the business are devoted to the purposes of charity.—American Sunday School Union v. Taylor, 161 Pa. 307, 23 L. R. A. 695, 29 Atl. 26.

GROWING CROPS: California has held that fruit trees are not growing crops and do not come within this exemption: Cottle v. Spitzer, 65 Cal. 456, 4 Pac. 435.

MINING CLAIMS: The purchase price of mining claims is covered by this exemption from taxation.—*State v. Moore*, 12 Cal. 56. The exemption of mining claims from taxation does not extend to the products of such mines.—*Hope Mining Co. v. Kennon*, 3 Mont. 35. Where a tract of land was entered

at the land office and paid for as a placer mining property and subsequently laid off into city lots, and there was no evidence that it bore precious metals in the portion so laid out, such property does not fall within the statutory mining property exemption.—*Dyke v. Whyte*, 17 Colo. 296, 29 Pac. 128.

CHAPTER LI.

DEFINITIONS.

Section.

1313. Certain words and phrases defined.

Section 1313. Certain Words and Phrases Defined:

Whenever the terms mentioned in this section are employed in this title, they are employed in the sense hereafter affixed to them;

First.—The term “property” includes moneys, credits, bonds, stocks, dues, franchises and all other matters and things, real, personal and mixed, capable of private ownership.

Second.—The term “real estate” includes:

1. The possession of, claim to, ownership of or right to, the possession of land;

2. All mines, minerals and quarries in and under the land and all rights and privileges appertaining thereto;

3. Improvements.

Third.—The term “improvements” includes:

1. All buildings, structures, fixtures, fences and improvements erected upon or affixed to the land;

2. All fruit, nut bearing or ornamental trees or vines not of natural growth.

Fourth.—The term “personal property” includes everything which is the subject of ownership not included within the meaning of the term “real estate.”

Fifth.—The terms “value” and “full cash value” mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth.—The term “credit” means those solvent debts, owing to the person, firm, corporation, or association assessed. The term “debts” means those liabilities owing by the person, firm, corporation, or association assessed to bona fide residents of this state, or firms, associations, or corporations doing business therein.

1901, 6th Ses. p. 235, Sec. 3.

CONSTRUCTIONS: Where the state constitution or statute expressly includes in the definition of “property,” for purposes of taxation, “Moneys, credits and bonds,” the bonds of a corporation organized in Arizona, payable in New York, and secured by mortgage in Arizona, may be taxed in California as the “property” of a permanent resident of California.—*Mackay v. City and County of San Francisco*, 113 Cal.

392, 45 Pac. 696. A seat in a stock exchange, a personal privilege of being and remaining a member of a voluntary association, with the assent of the associates, are not taxable as “property.”—*City and County of San Francisco v. Anderson*, 103 Cal. 69, 36 Pac. 1034. Abstract books are taxable as personal property, though written in a cipher peculiar to the set and requiring an expert to use them.—*Booth & Hanford Abstract Co. v. Phelps*, 8 Wash. 549, 36

Pac. 489. Silver bullion is "property" within the meaning of the law, and not being contained within any express exemption, must be regarded as taxable.—*Hope Min. Co. v. Kennon*, 3 Mont. 35. Mortgages are held to be "property" within the meaning of a statute similar to ours.—*Judge v. Spencer*, 15 Utah, 242, 48 Pac. 1097. A law levying a tax on "real property" embraces every species of title whether inchoate or complete.—*Puget Sound A. Co. v. Pierce County*, 1 Wash. Ter. 159; so, lands to

which a party has but an equitable title may be subjected to taxation.—*Wis., Etc., R. R. Co. v. Price County*, 64 Wis. 579, 26 N. W. 93. Improvements upon lands belonging to the United States are not real estate within the meaning of the revenue act of this state; and the listing of any such improvements as real estate by an assessor is fatal to the assessment.—*People v. Owyhee Lumber Co.* 1 Idaho, 420; *People v. Owyhee Min. Co.* 1 Idaho, 409.

CHAPTER LII.

LEVY OF TAXES.

Section.

1314. Amount of levy. Limitation.
1315. Ascertaining amount and levying tax.
1316. Tax has effect of judgment. Satisfaction.

Section.

1317. Tax on personalty a lien on realty.
1318. Tax on real property and improvements a lien.

Section 1314. Amount of Levy, Limitation: Whenever there is levied for state purposes, as provided by law, an annual ad valorem tax, the same shall be paid by the several counties of this state in the proportion which their assessed valuation, as shown by their respective assessment and subsequent assessment rolls, bears for the year next preceding that in which said tax is to be paid, to the total assessed valuation of this state for the preceding year; and upon the same property the board of county commisisoners of each county is also hereby authorized and empowered to levy annually a tax for county expenditure, inclusive of the amount required to be paid as state taxes, the sum of one hundred and fifty cents on each one hundred dollars, and if they deem necessary, a tax of twenty-five cents on each one hundred dollars, to be expended for the repairs and construction of bridges within the county, as the board of county commissioners may order and direct, and such additional and special taxes as are authorized by any law of this state: *Provided, however,* That whenever the board of county commissioners levy any tax, such levy must be entered on the records of their proceedings, and their clerk must deliver a certified copy thereof to the assessor and ex-officio tax collector, auditor, and treasurer, each of whom must file said copy in his office.

1901, 6th Ses. p. 235, Sec. 4.

State v. Ada County (Idaho), 62 Pac. 457.

Levy by county commissioners: See next section.

POWER OF LEGISLATURE TO LEVY TAXES: The legislature may levy taxes by requiring a gross sum to be collected from the taxable property of the state as well as by fixing a rate per cent.—*State v. Bailey*, 56 Kan. 81, 42 Pac. 373. Authority given to commissioners by the legislature to determine the amount of a particular levy is not open to the constitutional objec-

tion of being an exercise of judicial power by the legislature.—*Shaw v. Dennis*, 10 Ill. 405. It is a legislative power and may be assigned to other than legislative officers.—*San Francisco, Etc., R. Co. v. State Board of Equalization*, 60 Cal. 12; *Edwards v. People*, 88 Ill. 340. But a tax levy which is clearly in excess of the amount which the board of county commissioners are authorized to levy for a particular purpose is illegal.—*A. T. & S. F. Ry. Co. v. Wiggins (Okl.)*, 49 Pac. 1019.

A TAX LEVIED IS A DEBT: A tax levied or authorized by the territorial

legislature is a debt, within the meaning of the act of congress authorizing the issue of legal tender treasury notes.

—Haas v. Misner & Lamkin, 1 Idaho, 170.

Section 1315. Ascertaining Amount and Levying Tax: The board of county commissioners of each county must on the second Monday of September, annually, ascertain the rate necessary to be levied on each one hundred dollars of taxable property in said county, as shown by the last assessment, in order to secure the amount of state ad valorem taxes apportioned to such county, each year, by the state board of equalization as certified by the state auditor, and must levy the same, together with such percentage of increase, as in the judgment of the board of county commissioners may be necessary in order to provide for taxes unpaid prior to sale for delinquency thereof; and thereupon, the county shall become liable to the state for the full amount of such state ad valorem taxes apportioned to such county, and the same shall be payable in full without deductions, on or before the day designated by the assessor for the sale of property for delinquent taxes for such year in such county; and at the same time said commissioners, unless provision shall have been made for funding, refunding, or exchange of the outstanding county warrants indebtedness, as provided by law, must, whenever any county shall have warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, in addition to the other taxes provided by law, if such warrants amount to a sum equal to five per cent., or more of the value of the taxable property of such county, as shown by the last preceding assessment, must levy a special tax of ten mills on the dollar, as shown by such preceding assessment; if such warrants amount to a sum equal to four per cent. and less than five per cent. of such taxable property, they must levy a special tax of not less than eighty cents, nor more than one hundred cents on the one hundred dollars of such taxable property, as shown by such preceding assessment; if such warrants amount to a sum equal to three per cent. and less than four per cent. of such taxable property, they must levy a special tax of not less than sixty cents nor more than ninety cents on the one hundred dollars of such taxable property, as shown by such preceding assessment; if such warrants amount to a sum equal to two per cent. and less than three per cent. of such taxable property, they must levy a special tax of not less than forty cents nor more than sixty cents on the one hundred dollars of such taxable property, as shown by such preceding assessment; if such warrants amount to one per cent. and less than two per cent. of such taxable property, they must levy a special tax of not less than twenty cents nor more than forty cents on the one hundred dollars of such taxable property, as shown by such preceding assessment; and if such warrants amount to less than one per cent. of such taxable property, they must levy such special tax on the dollar as shown by such preceding assessment as shall be sufficient to pay such warrants.

All moneys arising from such special tax shall be placed in a special fund for the redemption of such warrants, which shall be paid exclusively out of said fund, which shall be known as the warrant redemp-

tion fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expenses and applicable thereto, shall be transferred to said warrant redemption fund.

1901, 6th Ses. p. 236, Sec. 5.

Section 1316. Tax Has Effect of Judgment. Satisfaction: Every tax, including taxes of cities, towns, villages and independent school districts, authorized by law to collect revenue, as provided in this title, has the effect of a judgment against the person, and every lien created hereby has the force and effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

1901, 6th Ses. p. 290, Sec. 181.

EFFECT OF LEVY: Levy creates a judgment and lien on the property of the assessed.—*Yuba v. Adams & Co.* 7 Cal. 35; and this lien relates back to the assessment.—*Reeve v. Kennedy*, 43 Cal. 643; and is not divested until the tax is paid.—*Cowell v. Washburn*, 22 Cal. 520; but this lien does not attach to subsequently acquired property.—*People v. Kohl*, 40 Cal. 127; so, a tax lien on a stock of goods is held not to attach to additions made to the stock by the subsequent vendee thereof.—*Chicago Bazar Co. v. McNichols* (Colo.), 56 Pac.

672. The lien is discharged by a lapse of time which would bar action to recover the tax.—*San Francisco v. Jones*, 2 West. Coast Rep. 772.

PURPOSE OF SECTION: The purpose of this section of the revenue act, making the taxes a lien on the property, and declaring that it shall not be removed until the taxes are paid, is to secure the payment of the taxes. If the payment of the judgment for taxes is secured by an undertaking on appeal, an injunction ought not to be granted to prevent the removal of the property.—*People v. Preston*, 1 Idaho, 374.

Section 1317. Tax on Personalty a Lien on Realty: Every tax due upon personal property is a lien upon real property of the owner thereof from and after the second Monday in January in each year.

1901, 6th Ses. p. 290, 182.

LIENS: The only tax liens in this state are those created by statute.—*Palmer v. Pettingill et al.* (Idaho), 55 Pac. 653. The tax levied on personal property is not a lien thereon,—at least, until such property has been seized by the tax collector for the purpose of making the tax by sale of the property as provided in Sec. 1560, Rev. St. (Sec. 1441 of this Code).—*Palmer v. Pettin-gill et al.* (Idaho), 55 Pac. 653. Taxes on personal property are not a lien on the realty unless expressly made so by statute.—*State v. Powell*, 44 Mo. 436; *Meriwether v. Garrett*, 102 U. S. 472, 26 L. ed. 197, and such statutory lien will not be enlarged by construction but

must be strictly construed.—*Miller v. Anderson* (S. Dak.), 11 L. R. A. 317, 47 N. W. 957. A statute simply making personal property taxes a lien on the real estate of the owner, does not give them priority over mortgage liens existing at the time they attach.—*Bibbins v. Clark*, 90 Iowa, 230, 29 L. R. A. 278, 57 N. W. 884, 59 N. W. 290. But, on the contrary, it has been held that a lien for personal property taxes imposed upon real estate is superior to liens of individuals previously acquired upon such real estate.—*New England Loan & Trust Co. v. Young* (Iowa), 10 L. R. A. 478; *Albany Brewing Co. v. Meriden*, 48 Conn. 243.

Section 1318. Tax on Real Property and Improvements, a Lien: Every tax of state, counties, cities, towns, villages and independent school district authorized by law to collect revenues as provided in this title, when due upon real estate, is a lien against property assessed, and every tax due upon improvements on real estate assessed to others than the owner of the real estate, is a lien upon the lands and improvements; which several liens attached as of the second Monday in January in each year.

1901, 6th Ses. p. 290, Sec. 183.

CHAPTER LIII.

ASSESSMENT OF PROPERTY.

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| <p>Section.</p> <p>1319. Assessed at full cash value.</p> <p>1320. Assessing live stock driven from other states.</p> <p>1321. Time and place of assessment. Who assessed.</p> <p>1322. Statement by property owner.</p> <p>1323. Blank forms and affidavits.</p> <p>1324. Form of statement of tax payer.</p> <p>1325. Who may fill out statement.</p> <p>1326. Examination of witnesses regarding statement.</p> <p>1327. Refusal to make statement, effect.</p> <p>1328. Listing absentees' property.</p> <p>1329. Absentees' name known or unknown.</p> <p>1330. Statement of property in another county.</p> <p>1331. Teams, etc., temporarily in state, not taxable.</p> <p>1332. Property in transit.</p> <p>1333. Agent, trustee, etc., assessed as such.</p> <p>1334. Individual stock not assessed, when.</p> <p>1335. Assessment of bank stock.</p> <p>1336. Property of corporation, where assessed.</p> <p>1337. Assessment of unpartitioned property.</p> <p>1338. Ferries and toll bridges, where assessed.</p> <p>1339. Vessels, where assessed.</p> <p>1340. Vessels registered out of state.</p> <p>1341. Boats not registered, where assessed.</p> <p>1342. Property in litigation, how assessed.</p> <p>1343. Concealed property, assessment on discovery.</p> <p>1344. Property that escaped taxation, assessment on.</p> <p>1345. Assessor to provide abstract of lands.</p> | <p>Section.</p> <p>1346. Lands must be platted.</p> <p>1347. What assessment book must contain.</p> <p>1348. Form of assessment book.</p> <p>1349. State auditor to print assessment rolls.</p> <p>1350. Affidavit of assessor.</p> <p>1351. Delivery of assessment book. Notice of equalization.</p> <p>1352. Failure to complete assessment. Penalty.</p> <p>1353. Only one description necessary.</p> <p>1354. Assessor and sureties liable for neglect.</p> <p>1355. Judgment in action against assessor.</p> <p>1356. Assessment of ditches, toll roads.</p> <p>1357. Who may assess railroad track, etc.</p> <p>1358. Real estate of railroad, assessment of.</p> <p>1359. Officer of railroad, etc., to make list.</p> <p>1360. Officer neglecting to list, state board shall assess.</p> <p>1361. Valuation apportioned to counties.</p> <p>1362. Duty of state and county auditors respecting railroads, etc.</p> <p>1363. Meeting of board to assess railroads, etc.</p> <p>1364. Raising valuation of railroads, etc.</p> <p>1365. Live stock ranging in different counties.</p> <p>1366. Assessment of live stock in home county.</p> <p>1367. Assessment of live stock in other than home county.</p> <p>1368. Payment on stock for balance of year.</p> <p>1369. Taxes on live stock a personal debt.</p> <p>1370. Paying rebates on live stock.</p> <p>1371. Stationery and stamps for assessor.</p> |
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Section 1319. Assessed at Full Cash Value: All taxable property must be assessed at its full cash value. Land and improvements thereon must be assessed separately.

1901, 6th Ses. p. 236, Sec. 10.

Failure to assess at full cash value:
Penal Code, Sec. 4794.

MANNER OF ASSESSING: The assessment of land is a prerequisite which cannot be dispensed with. It is the basis upon which all subsequent proceedings rest. For the purpose of defeating a tax deed, evidence may be given that the land was not assessed, or that it is public land.—*Quivey v. Lawrence*, 1 Idaho, 313. All taxable property should be assessed at its true

value.—*Wallace v. Bullen* (Okl.), 52 Pac. 954; but the value of property to be taxed is to be estimated with reference to the advantages or profits that can be derived from it.—*Stein v. Mayor*, etc., 17 Ala. 234. Where property has not been valued for taxation beyond its cash value and is taxed equally with other property in the district, the assessment was held valid.—*Wallace v. Bullen* (Okl.), 52 Pac. 954. Under the laws of this state, two contiguous town lots, owned by the same person, may be

jointly assessed, and one valuation fixed for said lots.—Co-operative Savings & Loan Ass'n v. Green et al. (Mackintosh, Intervener), (Idaho), 51 Pac. 770;

but in Oklahoma it has been held otherwise on a statute quite similar to ours.—Frazier v. Prince (Okl.), 58 Pac. 751.

Section 1320. Assessing Live Stock Driven From Other States: All live stock driven into this state from other states or territories, shall be assessed as personal property in any county where such live stock shall be found, proportionate to the time such live stock shall be or remain in said county, and the tax on said assessment shall be immediately paid by the owner or person in charge of such transient live stock, or secured to the satisfaction of the assessor.

The fact that such owner or person in charge has paid taxes on such live stock in some other state or territory shall constitute no bar to the recovery of taxes on such stock in this state on the same property or any portion thereof for the same year.

Immediately upon entering the state the owner or person in charge of such stock shall notify the assessor of the county into and through which he shall first drive such transient stock of the fact of such entry, and at the same time he shall make and deliver to the assessor a written statement under oath showing the number, description and different kinds of such live stock within the county belonging to him, or under his charge, with their marks and brands when practicable, and showing the full time during the current fiscal year that such live stock, every part, portion and kind thereof has been and will be within the county, and also each and every other county in the state into or through which it is intended, or contemplated to drive such stock, and the total time for which such stock or any part, portion or kind thereof will be and remain within the state. Upon the payment of the tax due upon said transient stock proportionate to the time mentioned in such statement, or for which such live stock actually remain in said county, the assessor shall make and deliver to the person in charge of such live stock a certificate in substance as follows:

The character, kind and number of live stock.

The name of the owner, and the person in charge.

The date of arrival in his county.

The period of time for which taxes have been paid.

The amount of such taxes and a receipt for the same.

The counties into or through which it is contemplated to drive such live stock.

A similar certificate shall be received by the person in charge of such transient stock from the assessor of each county into or through which such live stock shall be driven or kept; and all such certificates must be produced at any time for the inspection, and upon the demand, of any assessor or his deputy in the state. At any time that it shall appear from such certificates and the dates and periods of time covered thereby, that such live stock has not been assessed for the entire time such live stock has been actually been within the state, the assessor of any county may assess and collect on such live stock taxes for a period of time equal to all or part of the periods of time for which it may ap-

pear that taxes have not been paid on said stock, in all respects as though the entire time for which such assessment is being made were actually spent by such live stock within his county, and shall give his receipt for such taxes as provided by law.

The assessor and collector shall be governed as to the amount of taxes to be by him collected on such transient stock, and on all other stock and personal property, when not secured by lien on real estate, by the state and county rate of the previous year.

The assessor and collector may distrain and sell such portion of transient and other stock and all other personal property when not secured by lien on real estate, as may be requisite to pay the tax due and the costs of sale in the manner provided by law for the distraintment and sale of other personal property.

When the rate is fixed for the year in which such collection is made, then if a sum in excess of the rate has been collected, such excess shall be paid by the county treasurer to the person from whom the collection was made out of the migratory stock fund, or to his agent, on demand.

If a sum less than the rate fixed has been collected, the deficiency must be collected as other taxes on personal property are collected, if the property remains in the county.

The provisions of this title relative to taxation of live stock shall not apply to such stock in transit through this state by railroad or other means of public transportation.

1901, 6th Ses. p. 242, Secs. 20 to 24 and 27.

Note.—Sections 1426 and 1427 R. S. are omitted by the Commissioners, their provisions being fully covered by the above section.

ACT NOT IN CONFLICT WITH U. S. CONST.: Wyoming has a similar statute, differing in that it applies only to cattle brought in to "graze." It is held not to be in conflict with U. S. Const. Art. IV, Sec. 2, providing that the citizens of each state are entitled to the privileges and immunities of the citizens of the several states.—*Kelley v. Rhoads* (Wyo.), 51 Pac. 593; nor with the fourteenth amendment.—*Id.* Where sheep are brought into a state

and slowly driven through it, ultimately destined for another state, such exportation does not begin until the sheep are started on their final journey by rail.—*Kelley v. Rhoads* (Wyo.), 51 Pac. 593.

INVALID SALE: Where sheep were levied upon to pay a tax and in making the sale, the officer accepted bids and sold enough sheep in the whole flock to satisfy the debt, without separating them in number or kind, but leaving it with the buyer after sale to select enough sheep from the whole flock to cover the price paid, such sale is irregular, even if the purchaser consented to it.—*Taylor v. Robertson*, 16 Utah, 330, 52 Pac. 1.

Section 1321. Time and Place of Assessment. Who Assessed: All taxable property shall be assessed in the county, city or district, in which it is situated on the second Monday in January, or, if not within the state on that day, on the day of assessment. The assessor must, between the second Monday of January and the first day of July in each year, ascertain the names of all taxable inhabitants and all property in his county subject to taxation, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at 12 o'clock m. of the second Monday of January next preceding, or on the day of assessment as aforesaid; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof

invalid. In assessing solvent credits not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of this state.

1901, 6th Ses. p. 236, Sec. 71.

PLACE OF ASSESSMENT: If assessments are made in doubtful or disputed territory by two counties, it is competent for the taxpayer to pay his taxes in either county, as may best suit his interest or convenience, provided he can show that the land lies in the county where he has paid his taxes, and he has been duly assessed therein.—*People v. Wilkerson et al.* 1 Idaho, 619. It is competent for the legislature in such case to provide for the assessment and collection of taxes by either of the two counties, when it is left optional with the taxpayer to pay his taxes in the county where the land is actually situated.—*Id.* Where the assessor assesses property in the resident county of the owner and delivers certificate thereof, and another assessor, who has knowledge of the certificate, again assesses the property, he is liable

in damages.—*Taylor v. Robertson*, 16 Utah, 330, 52 Pac. 1. Where property located in one county on February 1, was withheld from assessment, and after March 1 removed to another county, it could be lawfully taxed in such other county.—*Boyd v. Wiggins*, 7 Okl. 85, 54 Pac. 411. Where the proof shows that cattle owned in another state or territory actually ranged and grazed in a certain county of Oklahoma during the entire year, the cattle were properly taxable in such county.—*Prairie Cattle Co. v. Williamson*, 55 Okl. 488, 49 Pac. 937. A mistake in the name of the owner in assessment of real property does not invalidate the assessment, but an assessment of personal property to a person other than the owner is absolutely void.—*Lake County v. Sulphur Bank Quicksilver Min. Co.* 66 Cal. 17, 4 Pac. 876.

Section 1322: Statement by Property Owner: The assessor must exact from each person a statement under oath, setting forth specifically all the real and personal property owned by said person or under his control at 12 m. on the second Monday of January, and as to property not within the state on that day, on the day of assessment. Such statement shall be in writing, showing separately: First. All property belonging to, claimed by, or in the possession or under the control or management of such person. Second. All property belonging to, claimed by, or in the possession, or under the control or management of any firm, of which such person is a member. Third. All property belonging to, claimed by, or in the possession, or under the control or management of any corporation, of which such person is president, secretary, cashier, or managing agent. But whenever one member of a firm, or one of the proper officers of a corporation has made a statement showing the property of the firm, or corporation, another member of the firm, or another official of the corporation need not include such property in that statement made by him, but such statement must show the name of the person or officer who made the statement in which the property is included.

Fourth. The county, town, city, village, or independent school district in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) the school district, road district, or other revenue districts in which it is situated.

Fifth. An exact description of all lands in parcels, improvements and personal property, including all vessels, steamers and other water crafts; and all taxable state, county, city or municipal or public bonds, and the taxable bonds of any person, firm or corporation, and deposits of money, gold dust, or other valuables, and the names of the persons

with whom such deposits are made and the places in which they may be found. Sixth. All shares of stock in any national banking association located within this state, and all solvent credits unsecured by deed of trust, mortgage or other lien on real or personal property, owned by, or due, or owing to such person or any firm of which he is a member, or any corporation of which he is the president, secretary, cashier or managing agent. In making up the amount of credits which any person, firm or corporation is required to list, he will be entitled to deduct from the gross amount of such credits, the amount of all bona fide debts unsecured by mortgage or trust deed or other lien on real or personal property owing by him or any firm or corporation of which he is president, secretary, cashier or managing agent; but no acknowledgement of indebtedness not founded on actual consideration, and no such acknowledgement made for the purpose of being so deducted must be considered a debt within the meaning of this section; and no person is entitled to a deduction on account of an obligation of any kind given to an insurance company for the premium of insurance, nor on account of any unpaid subscription to any institution or society; nor on account of a subscription to, or installment payable on the capital stock of any company or corporation and no liability of any person, or persons, company or corporation as surety for another must be deducted; and no liability of any person or persons, company or corporation on any bond or undertaking must be deducted; and no deduction must be made in any case unless the party claiming such deduction discloses to the assessor by a written statement, under oath, the name or names of the persons to whom such person or persons, firm, company or corporation is indebted, with the amount of every such indebtedness; and also that such indebtedness is not barred by the statute of limitations, or if it is so barred, acknowledges such indebtedness in writing; and such written statement under oath shall be subject to examination by the board of equalization of the county having the equalization of the assessment roll upon which such deduction is claimed upon demand of said board upon the assessor thereof. No debt is to be deducted unless the statement shows the amount of such debt as stated under oath in the aggregate, and that the same is due to bona fide residents of this state, or to firms or corporations doing business in this state.

1901, 6th Ses. p. 245, Secs. 28 and 29.

Making false statement: Penal Code, Sec. 4650.

GENERAL DISCUSSION OF SECTION: It is the duty of the taxpayer to furnish the assessor, on demand, the statement on oath required by this section, and, if he fails to do so, or neglects it, it is the duty of the assessor to assess such taxpayer's property within his jurisdiction, and in that case the taxpayer cannot recover taxes paid under protest, on property so assessed.—*Erwin v. Hubbard* (Idaho), 37 Pac. 274. The assessor is not bound by the valuation placed upon real or personal property by the owner thereof, but he is responsible for the correctness

of descriptions of property assessed by him.—*People v. Owyhee Min. Co.* 1 Idaho, 409. Likewise, it is the duty of the owner of property to furnish a list of it to the assessor, but such a listing is not a prerequisite to a valid assessment, and where the owner fails so to list, it is the duty of the assessor to make the assessment on other sources of information.—*Pentecost v. Stiles*, 5 Okl. 500, 49 Pac. 921; so, the list furnished by the taxpayer does not constitute an assessment, when received by the assessor, but only aids in obtaining a true description of the taxable property and is evidence from which the assessment may be made.—*Ore. & W. Mortg. Sav. Bank v. Jor-*

dan, 16 Ore. 113, 17 Pac. 621. A formal demand on the taxpayer for a list is not necessary, where an effort to make demand was made and the taxpayer evaded furnishing a list.—*McMillan v. Carter*, 6 Mont. 215, 9 Pac. 906. The owner of property is not estopped from disputing the correctness of the descriptions of property listed and given in by him under oath to the assessor.—*People v. Owyhee Min. Co.* 1 Idaho, 409; but see *People v. S. & C. R. R. Co.* 49 Cal. 414, which holds the list to be conclusive against the party making it.

Subdivision 1. Where parties having in their possession personal property liable to taxation, refuse, after demand, to disclose the names of the owners or to furnish a description of the property as required by law, the assessor is required by Section 1261 to note such refusal on the assessment book and to make an estimate of the value of the property.—See *Bode v. Holtz*, 65 Cal. 106, 3 Pac. 495. Property stored in a warehouse, for which the warehouseman has issued receipts, is not in his possession, within the meaning of the Code.—*Weyse v. Crawford*, 85 Cal. 196, 24 Pac. 735.

Subdivision 3. The statement of the property which is to be made by the managing agent of a corporation is properly made by the superintendent.—*Lake County v. Sulphur Bank Quick-silver Min. Co.* 68 Cal. 14, 8 Pac. 593.

Subdivision 4. An owner of cattle who allows them to run in two counties, must make returns to the assessors of both counties showing the number running in each on the first of May, and, failing to do so, the assessors may make his assessment from such means of knowledge as may be accessible to them.—*Price v. Kramer*, 4 Colo. 546.

Subdivision 6. When congress enacted the currency act of 1864, it in-

tended to permit the shares in national banks, in the hands of corporations or individuals to be taxed, wherever such associations might be organized, whether in states or territories.—*People v. Moore*, 1 Idaho, 504. Congress did not intend by the first proviso of the 41st section of the national currency act of 1864, to require uniform taxation in all the different municipalities of the state or territory, but only that the same should be uniform in the municipality or subdivision in which the bank is located, or in which the shareholders reside.—*People v. Moore*, 1 Idaho, 504. Congress has sufficiently authorized the legislature of the territory to pass a law requiring the taxation of national bank shares in the hands of individuals or corporations.—*Id.* The limitation as to the place of taxation of bank shares, contained in the national currency act of 1864, and in the act of 1868, amendatory thereof, requiring the assessment to be made "at the place where the bank is located, and not elsewhere," must be construed to mean the state in which the bank is located.—*Id.* The revenue law in force in 1871 did not authorize the assessment or taxation of shares of national bank stock in the hands of individuals or corporations.—*Id.*

DEDUCTION OF DEBTS NOT AN EXEMPTION: A deduction of debts and credits is not an exemption within the meaning of constitutional and statutory provisions as to exemptions from taxation; nor does such deduction violate a constitutional provision "for a uniform and equal rate of assessment for taxation," since the just value of credits is to be ascertained by subtracting from their gross amount the bona fide indebtedness of the taxpayer.—*Florer v. Sheridan (Ind.)*, 36 N. E. 365, 23 L. R. A. 278 and note.

Section 1323. Blank Forms and Affidavit: The state auditor may have printed at state expense and may furnish to the assessor of each county in the state at the actual cost thereof to be paid as hereinafter provided the blank forms of statements provided for in the next section affixing thereto an affidavit which must be substantially as follows:

I do swear that I am a resident of the county of (naming it); that the above list contains a full and correct statement of all property, subject to taxation, which I, or any firm, of which I am a member, or any corporation, association, or company of which I am president, secretary, cashier or managing agent, owned, possessed or controlled at twelve m. on the second Monday in January last, or now own, claim, possess, or control and which was not within the state on that day, and which is not already assessed this year; and

that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county, or my possession, for the purpose of avoiding any assessment upon the same, or of making this statement, and that the debts therein stated as owing by me are owing to bona fide residents of this state, or to firms, associations or corporations doing business in this state and hereon listed and sworn to as provided by law.

The affidavit to the statement on behalf of any firm or corporation, must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the foregoing form.

1901, 6th Ses. p. 247, Sec. 31.

Section 1324. Form of Statement of Taxpayer:

The form for such statements shall be as follows: *Provided*, A different size, may, when convenient, be used.

PERSONAL PROPERTY.

PERSONAL PROPERTY—Continued.

Extend into Same Column	State, County, Municipal and other taxable bonds....		Extend on Roll by First Letter.	Amounts brought forward		No.....
	Judgments for money, State, County or City warrants.			(L)umber feet		
	Unsecured credits or solvent debts due from others including deposits in any bank or with any association			(S)aw logs.....feet		
	Shares in National or other banks; \$....			(W)ood feet		
	Unsecured debts due to bona fide residents of this State deducted from above \$.....			Money on hand....		
	Balance assessable..			Machinery		
	Coal tons			Musical instruments.		
	Consigned goods..lbs			Sewing machines.No		
	Cattle—(t)horoughbred .No.			Sheep — (i)mported or (f)ine.No.		
	(g)raded .. No.			(g)raded .. No.		
(c)ommon stock .. No.		(c)ommon . No.				
(b)eef No.		Wool lbs				
(o)xen No.		Steamers, vessels, watercraft				
Cows, milchNo.		(W)agons or other vehicles No.				
Farming utensils and machinery over \$400		(B)icycles (extend "B" on roll				
Fixtures of saloons, stores and other business places ...		Watches and jewelry No.				
Furniture		Wines gals.				
Grain—Wheat ..lbs.		Whiskeys gals.				
oats lbs.		Other fermented liquors gals.				
barley lbs.		All other property naming kind				
corn lbs.						
flax seed ..lbs.						
Vegetables lbs.						
Goats—common (G c) No.		Property held in trust, list as other property is, by separate statement, as trustee giving value here, only)				
Angora (G a) No.		Property belonging to minor children (value to be extended only, list on separate statement)				
Goods, wares, merchandise and number mercantile establishments		Separate property of wife (extend value only, list on separate statement)				
Harness, robes and saddles		(The purpose of the foregoing three classifications is to notify assessor of such property, not to be extended on roll until separately classified).				
Hay tons		Total				
Hogs No.						
Horses—(t)horoughbred .No.						
(g)raded .. No.						
(s)tock No.						
(S)tallions No.						
(C)olts No.						
(J)acks and (J)ennets No.						
(M)ules No.						

You are hereby notified that your assessed valuation is as follows, viz:

On real estate

On Personal property

For poll tax

Total

Board of Equalization meets on 2d Monday in July. Taxes become delinquent on 1st Monday in January.

Name

Residence

Delivered

STATE OF IDAHO,
County of..... ss.

STATE OF IDAHO,
County of..... ss.

Independent School District No.....
General School District No.....
Road District No.....
City of.....

Statement of

of Precinct

190—.

NOTICE TO TAXPAYERS.

This list must be made out and returned to the assessor within TEN DAYS from service. Show where property is taxable. If in city by the initial "C;" if in Independent School District by "I. S.;" if in both by "C. & I. S." opposite each class.

Demand for \$2 poll tax, between 21 and 50 years.

Say yes or no.....

If no, state why.

Served.....day of.....19..

By

Assessor.

Returned.....19..

I do solemnly swear that the following listed unsecured debts are such as the law provides may be deducted from the bank stock, warrants, bonds, judgments, solvent debts, deposits and credits by me herein listed; that the same are not barred by the Statute of Limitation or if so barred are hereby acknowledged to be valid, outstanding indebtedness by me owing, and my right to plead such Statute of Limitation thereto has been lawfully waived in writing.

To Whom Due.

Amount.

[illegible]

Name of Taxpayer.

Subscribed and sworn to before me this
.....day of.....190..

Section 1325. Who May Fill Out Statement: The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him properly filled out.

1901, 6th Ses. p. 247, Sec. 33.

Section 1326. Examination of Witnesses Regarding Statement: The assessor may in his discretion subpoena and examine witnesses in relation to any statement or claim for deductions on account of unsecured debts due and all persons are required to testify when requested so to do by him and he may also issue subpoenas duces tecum to compel the production before him of all necessary books, papers or accounts to enable him to verify any such statement or claim for deduction of unsecured debts; and in case of refusal, the assessor must certify such fact to the judge of any court who must issue a subpoena and compel a refusing witness to give testimony and to produce all books, papers and accounts so demanded by the assessor, and must for each refusal impose a fine of not less than twenty nor more than one hundred dollars.

1901, 6th Ses. p. 248, Sec. 34.

Penalty for swearing falsely: Penal Code, Sec. 4650.

MAY ADD TO LIST WITHOUT EXAMINATION: The statute authorizing the assessor to issue subpoena and hold examination, if dissatisfied with

the verified list furnished by the taxpayer, does not prevent him from adding to such list, without such examination, property not included in such list.—*People v. Nat. Bank of D. O. Mills & Co.* 123 Cal. 53, 55 Pac. 685.

Section 1327. Refusal to Make Statement, Effect: If any person, after demand made by the assessor, neglects or refuses to give under oath the statement therein provided for, or to comply with the other requirements of this title, the assessor must note the refusal on the assessment book, opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the assessor must not be reduced by the board of commissioners.

1901, 6th Ses. p. 248, Sec. 35.

Refusal to give statement a misdemeanor: Penal Code, Sec. 4789.

RESULT OF FAILURE TO RETURN LIST: Although property was assessed in the county of A. in 1889, the assessment of the same property in the county of W., in the same year was not double taxation, but a penalty imposed by law for refusal to furnish the statement required by this section.—*Erwin v. Hubbard* (Idaho), 37 Pac. 274. If a taxpayer fails to return the lists, the description made by the assessor need not be strictly accurate, and the valuation correct, but it is essential to the validity of the tax that some description or list be made.—

Board of Com'rs of Valencia County v. A. T. & S. F. Ry. Co. 3 N. M. 677, 10 Pac. 294. In an action to recover taxes assessed against one who has neglected to return a statement of his property, and refused to sign the one prepared by the assessor, evidence is not admissible that an excessive valuation was placed on the property, and where the person complaining has refused to give the assessor his list under oath, as required by statute, no reduction shall be made by the board of equalization in the assessment made by the assessor.—*State v. Diamond Vall. Live Stock & Land Co.* 21 Nev. 86, 25 Pac. 448; see also note under Sec. 1322.

Section 1328. Listing Absentee's Property: If the owner or claimant of any property, not listed by another person, is

absent or unknown, the assessor must make an estimate of the value of such property.

1901, 6th Ses. p. 248, Sec. 36.

Section 1329. Absentee's Name Known or Unknown:

If the name of the absent owner is known to the assessor, the property must be assessed in his name; if unknown, the property must be assessed to "unknown owners."

1901, 6th Ses. p. 248, Sec. 37.

NECESSITY OF NAME: An assessment "to D. B. M. and all owners and claimants, known and unknown," is void.—*Grotefend v. Ultz*, 53 Cal. 666. So, an assessment to a person named and "to unknown owners," is void.—*Jatunn v. O'Brien*, 89 Cal. 57, 26 Pac. 635. So, also, an assessment "to all

owners and claimants known and unknown," is in violation of the statute.—*De Frieze v. Quint*, 94 Cal. 653, 30 Pac. 1. Failure to assess property in the name of the known owner is a substantial failure to comply with the law.—*Vestal v. Morris*, 11 Wash. 451, 39 Pac. 960.

Section 1330. Statement of Property in Another County:

The assessor, as soon as he receives a statement of any taxable property, situated in another county, must make a copy of such statement for each county in which the same is situated and transmit the same by mail or express to the assessor of the proper county, who must assess the same as other taxable property therein.

1901, 6th Ses. p. 248, Sec. 38.

Section 1331. Team, Etc., Temporarily in State not Taxable:

Any team, wagon, pack train, or any animal or property belonging thereto,, or connected therewith, owned without the state and temporarily within the state for the purpose of carrying or delivering goods or other freight, is not subject to taxation.

1901, 6th Ses. p. 248, Sec. 39.

Section 1332. Property in Transit: All personal property consigned to any person within this state from any place out of this state must be assessed as other property; and all property in transit to any county in this state must be assessed at its destination or in any county where it remains thirty days.

1901, 6th Ses. p. 249, Sec. 40.

Section 1333. Agent, Trustee, Etc., Assessed as Such:

When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

1901, 6th Ses. p. 249, Sec. 41.

Section 1334. Individual Stock not Assessed, When:

The owner or holder of stock in any firm or corporation, the entire capital or property whereof is assessed, must not be assessed individually for his stock in such firm or corporation.

1901, 6th Ses. p. 249, Sec. 42.

DOUBLE TAXATION: It would be double taxation to assess a corporation on all of its corporate property and also to assess to each of the stockhold-

ers the shares held by him.—*Burke v. Badlam*, 57 Cal. 594; but shares of stock in a corporation, the tangible property of which is situated in another state and subject to taxation under the laws

thereof, such shares being owned by a resident of this state, are taxable without regard to the taxes thus imposed upon the corporate property, and such taxation is not double.—*City and County of San Francisco v. Fry*, 63 Cal. 470. Taxation of shares of corporate stock in the hands of stockholders,

as their individual property, is not unconstitutional as being double taxation because a tax has already been laid on the property of the corporation, but from which the capital stock in the hands of the corporation has been omitted.—*South Nashville Street R. Co. v. Morrow*, 78 Tenn. 406, 2 L. R. A. 853.

Section 1335. Assessment of Bank Stock: The stockholders of every banking association located in this state, and organized under the laws of the United States or of this state must be assessed and taxed on the value of their shares of stock therein in the county, city, town, village and independent school district, authorized by law to collect revenue as in this subdivision provided, where such bank is located, whether the stockholders there reside or not; such shares must be listed and assessed with regard to the value of such shares by reason of any net individual profits or surplus of such corporation and with regard to the ownership thereof, subject, however, to all deductions allowed in the assessment of other moneyed capital and subject to the restriction that taxation of such shares must not be at a greater rate than is assessed on any other moneyed capital in the hands of individual citizens of the state in the place where such bank is located. Every such banking association must furnish to the assessor a full and correct list of the names and residence of its stockholders and the number of shares held by each. The taxes upon such shares must be assessed against the holder of the same in the list of personal property and must be paid by the bank. The real estate of such banking association, is subject to state, county, municipal and district taxation as other real estate.

1901, 6th Ses. p. 249, Sec. 43.

Section 1336: Property of Corporation, Where Assessed: The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

1901, 6th Ses. p. 249, Sec. 44.

Section 1337. Assessment of Unpartitioned Property: The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

1901, 6th Ses. p. 250, Sec. 45.

Section 1338. Ferries and Toll Bridges, Where Assessed: Ferries and toll bridges must be assessed in the county where tolls are collected.

1901, 6th Ses. p. 250, Sec. 46.

Section 1339. Vessels, Where Assessed: All vessels of every class which are by law required to be registered must be assessed and the taxes thereon paid only in the county where the same are registered, enrolled, or licensed.

1901, 6th Ses. p. 250, Sec. 47.

TAX ON VESSELS NOT A REGULATION OF COMMERCE: Levying a tax on vessels or other water craft, or the exaction of a license by the state within which the property subject to the exaction has its situs, is not a regulation of commerce within the meaning of the U. S. constitution.—*Wiggins Ferry Co. v. City of East St. Louis*, 107 U. S. 365, 27 L. ed. 419.

DOMICILE OF VESSELS: The domicile of a vessel duly registered under the acts of congress, regulating the registry of vessels and regarding bills of sale and mortgages affecting the

same, is the port where the vessel is registered, and which must be nearest to the place where the owner or owners reside.—*Johnson v. De Bary-Baya Merchants' Line*, 37 Fla. 499, 19 So. 640, 37 L. R. A. 518, and note.

The situs for taxation, of unregistered vessels (including dredges or scows) engaged in interstate commerce, is the state of the domicile of the owner, although they may never have been within that state,—in the absence of anything to show that they are so permanently located there.—*Commonwealth v. American Dredging Co.* 122 Pa. 386, 1 L. R. A. 237, 15 Atl. 443.

Section 1340. Vessels Registered out of State: Vessels registered, licensed, or enrolled out of and plying, in whole or in part, in the waters of this state, the owners of which reside in this state, must be assessed in this state.

1901, 6th Ses. p. 250, Sec. 48.

TRANSIENT VESSELS: A vessel registered out of the state and never here except transiently, for the purpose of receiving and discharging

cargo, is not subject to assessment for taxation in this state, though owned in part by residents of this state.—*San Francisco v. Talbot*, 63 Cal. 485.

Section 1341. Boats not Registered Where Assessed: All boats and small craft not required to be registered must be assessed in the county where their owner resides.

1901, 6th Ses. p. 250, Sec. 49.

Section 1342. Property in Litigation, How Assessed: Money and property in litigation in possession of a county treasurer, of a court, clerk, or receiver, must be assessed to such treasurer, clerk, or receiver, and a statement of the amount of taxes due thereon filed in the case by the assessor, and the taxes must be paid thereon under the direction of the court. No order, judgment or decree of any court shall be construed to discharge the lien of any tax upon such property.

1901, 6th Ses. p. 250, Sec. 50.

Section 1343. Concealed Property. Assessment on Discovery: Any property willfully concealed, removed, transferred or misrepresented by the owner or agent thereof to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of commissioners.

1901, 6th Ses. p. 250, Sec. 51.

LEGISLATURE MAY IMPOSE PENALTY: The legislature may impose such a penalty.—*Biddle v. Oaks*,

59 Cal. 94; *Farmers' Bank v. Board of Equalization*, 97 Cal. 318, 32 Pac. 312; *Appeal of Fox and Wife*, 112 Pa. St. 337, 4 Atl. 149.

Section 1344. Property that Escaped Taxation. Assessment on: Any property discovered by the assessor to have escaped assessment for the preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value.

1901, 6th Ses. p. 250, Sec. 52.

STATUTE IS CONSTITUTIONAL: The statute providing for double assessment of property which has escaped assessment for the last preceding year, being intended to impose a

penalty on the owner, is not unconstitutional.—Biddle v. Oaks, 59 Cal. 94; City of San Luis Obispo v. Pettit, 87 Cal. 499, 25 Pac. 694.

Section 1345. Assessor to Provide Abstract of Lands:

The assessor shall provide himself, each year, with an abstract of all lands in his county upon which final proof has been made in any United States land office; and also of all lands purchased from the state, which abstract of state lands shall show the amount paid upon each such purchase and the land to which the state has given its deed. The assessor shall pay for the same and shall be entitled to have his bill therefor audited and allowed to him as a necessary expense of his office.

1901, 6th Ses. p. 283, Sec. 150.

Section 1346. Lands Must be Platted: The assessor must have prepared and platted, a full, accurate and complete plat book of his county, in which shall be platted all townships and fractional townships therein which have been officially surveyed and platted by the United States government, such plats to be made in draftsmanlike manner on a scale of four inches to the mile. All lands in the county for which the United States has issued its patent shall be platted thereon in such a manner as to correspond with the technical description of such land as described by the government survey thereof; and on each of such tracts shall be entered the name of the patentee thereof, together with the name of the present owner. In all cases where any portion of such township has been sub-divided into lots and blocks for town site purposes, a plat of such townsite shall be prepared according to the official sub-divisions thereof, if it has been so sub-divided, and upon each sub-division shall be entered the name of the present owner and if a government town site, then also the name of the person to whom the first deed for each sub-division thereof was issued. Thereafter when any deed of transfer is presented to the assessor which in any wise affects any original ownership as shown by such plat it shall be his duty to change such plat as may be necessary to show such change of title and to enter the name of the present owner thereon; and thereupon to stamp any such deed so presented with the following words, "presented to and platted by me" and sign the name, for which there shall be no charge.

All necessary and reasonable expense incurred by the assessor in complying with the provisions of this section, shall be audited and allowed by the county as a necessary expense of such office.

1901, 6th Ses. p. 283, Sec. 151.

Section 1347. What Assessment Book Must Contain: The state auditor may have printed each year an assessment book, and also subsequent and delinquent assessment books, in the form herein provided, for each county in the state: *Provided*, That any county so specifying may have such subsequent assessment book bound with the assessment book, occupying the final requisite number of pages, as may be indicated, in which must be listed by the assessor, alphabetically arranged according to the owner's name all

property within the county; and in which must be specified, in separate columns, according to the classification provided for by the form of assessment roll under the appropriate head; when no head is given in case of personal property then under the head "not otherwise classified." Such listing shall include:

The name and residence of the person to whom the property is assessed. Land, by township, range, section, or fractional section; and when such land is not described as a congressional division or subdivision, by metes and bounds, or other description sufficient to identify it, giving an estimate of the number of acres, and locality. The kind of improvements on land, when consisting of improvements on mining claims, quartz mills, concentrators, samplers, smelters, or other mining improvements, grist mills, saw mills, planing mills, shingle mills, mining, manufacturing, or irrigating ditches or toll roads. Franchises shall be listed in the column for improvements on real estate. When any tract of land is situated in two or more school, or road or other revenue districts of the county, the part in each district must be separately designated, together with the improvements thereon. City and town lots, naming the city or town and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

All personal property shall be listed and classified as required by the form of the assessment roll showing the kind, number and quality; cattle shall be listed as thoroughbred, graded, common stock, beef, oxen; cows shall be listed separately; and horses shall be listed as thoroughbred, graded, stock, stallions, and colts, jacks, jennets, or mules; sheep and goats shall be listed together; sheep as imported, fine, graded and comon; goats, common and Angora; and other property as provided for by the form of the assessment roll; but a failure to enumerate and classify in detail such personal property does not invalidate the assessment, but the assessor shall forfeit the sum of one hundred dollars for any failure to fully enumerate and classify the classes of property according to the classification herein provided for or according to the requirements of the form of assessment roll herein designated to be recovered on his official bond for the use of the county. All classifications may be made by abbreviating to the first letter, or first two letters, when necessary to avoid confusion, of the word or words necessary to indicate the class or kind of property. The cash value of real estate, other than city or town lots. The kind and cash value of improvements on such real estate. The cash value of city or town lots. The cash value of improvements on city and town lots. The cash value of all personal property, exclusive of money, enumerating the several classes according to the sub-division of the assessment roll therefor. The amount of money. The school, road, and other revenue districts in which each piece of property assessed is situated. The total value of all property. The total value of property after equalization. The word yes and no in separate column, opposite the name of every person assessed as to whether liable to pay a poll tax and if not liable, a statement of why exempt.

Section 1348. Form of Assessment Book: The form of the assessment book must be substantially as follows:

(Subsequent and delinquent assessment rolls to be in the same form, except that such changes as are required by reason of the character of the roll shall be made).

TO ALL CLAIMANTS

County, Idaho.

Assessment Roll for

When Tax Paid.

Taxpayers' Names and Residences.

DESCRIPTION OF PROPERTY.

Real Estate Other Than City and Town Lots.

Subdivision of Section.

Note.—Personal Property (Here items may be enumerated in the space to the column for number of acres.)

Note.—Migratory Stock to be carried out in equivalents to number for a whole year.

City or Town Lots.

Name of City or Town.

Sec.

Twp.

Range.

No. of Acres.

Acres.

Value of Real Estate other than City and town lots.

Kind and value of improvements thereon.

Value of City and Town Lots.

Value of Improvements thereon.

Kind

No.

Value

Cattle.

No.

Value

Cows.

No.

Value

Horses.

Kind

No.

Value

Sheep.

Kind

No.

Value

Wool.

No.

Value

Swine.

KNOWN AND UNKNOWN

For the Fiscal Year 190.

PERSONAL PROPERTY.

Kind		No.	Value	Vehicles and Bicycles.
Kind		Value	Merchandise.	
Kind		Value	Furniture and Fixtures, Musical Instruments and Sewing Machines.	
Kind		Value	Money.	
Farm Implements and Machinery.				
Other Machinery.				
Harness, Robes and Saddles.				
Kind	Value	Lumber, Saw Logs and Wood.		
Watches and Jewelry				
Personal Property not Otherwise Classified.				
Value of Personal Property Herein before Listed.				
No.	Shares in National or other Bank.			
Warrants, Bonds, Judgments and Credits, Solvent Debts, Deposits.				
Deduction on account of Debts due bona fide residents, from Bank Shares and Money				
Equivalents only.				
Widows' Exemption.				
Total Value of Property for Taxation.				
Total Value of Property after Equalization.				
State and County Tax.				
City Tax				
Special and Ind. School Dist.	Bond.	No. of School.	Road.	Poll Tax, if exempt, why?
Remarks.				

1901, 6th Ses. p. 262, Sec. 88.

Assessment of railroad property: Sec. 1357 et seq.

Description of lands, etc.: Sec. 1533.

GENERAL DISCUSSION OF SECTION: In order to be valid, an assessment of property for taxation must substantially conform to the requirements of the revenue law in respect to the classification of the property; if it does not so conform, it is void.—*People v. Owyhee Mining Co.* 1 Idaho, 409; and the blending together of the several different kind of taxes, in an assessment roll, invalidates the entire tax. *People v. Moore*, 1 Idaho, 662. Neither will the fact that a listing of the property otherwise would be more convenient and render the assessment and collection of taxes less expensive abrogate the statutory requirements.—*State v. Abrahams*, 6 Wash. 372, 33 Pac. 964. Property is not assessed, though on a verified list, until it is set down in the assessment roll as required by statute.—*Oregon & W. M. Sav. Bank v. Jordan*, 16 Ore. 113, 17 Pac. 621.

When the aggregate of a column of figures is preceded by a dollar mark, the result must follow that each item of such column is also dollars, although not preceded by such mark; and this on the well established maxim in mathematics, that the whole is equal to all its parts.—*People v. Owyhee Lumber Co.* 1 Idaho, 420; *State v. Sadler*, 21 Nev. 13, 23 Pac. 799; but where there is no dollar sign or other character in the assessment or duplicate rolls showing what was meant by the column headed "value" and of that headed "taxes," the assessment is invalid.—*Emeric v. Alvarado*, 90 Cal. 444, 27 Pac. 356. The abbreviation "dols.," in an assessment for taxes, is equivalent to the word dollars.—*Salisbury v. Shirley*, 66 Cal. 223, 5 Pac. 104.

NAMES AND DESCRIPTIONS: Where, under the tabular heading, "Tax Payer's Name," appear the words, "Place, Wilson, Newman and others," the assessment is invalid.—*Bosworth v. Webster*, 64 Cal. 1, 27 Pac. 786. An assessment of real property described as a "tract of land entered by Frazier in Section 13, Township 13, Range 7," is void for indefiniteness.—*Lake County v. Sulphur Bank Quicksilver Mining Co.* 66 Cal. 17, 4 Pac. 876.

TOWN LOTS: Two contiguous town lots owned by the same person may be jointly assessed.—*Co-op. Sav. & Loan Ass'n v. Green* (Idaho), 51 Pac. 770. The fact that the assessor classified under two different heads "Town and City Lots" and "Improvements on Town and City Lots," did not invalidate the assessment rolls.—*Gibbons v.*

Moody (Ore.), 55 Pac. 23. An assessment of lots as "fractional lots," where the official plat does not contain the word "fractional," is not a material misdescription where one examining the plat book would not be misled.—*Noyes v. King County*, 18 Wash. 417, 51 Pac. 1052; so a description of land in an assessment roll as a "fraction of Lot No. 2," in a certain block, does not sufficiently describe an undivided one-half of a part only of such lot.—*Jory v. Palace Dry-Goods & Shoe Co.* 30 Ore. 196, 46 Pac. 786. Likewise a description of land on an assessment roll as "Lot fronting 78 feet east side of S. Street, between 3d and 4th, bounded north by H., south by M.," renders the assessment void for indefiniteness.—*Harvey v. Meyer*, 117 Cal. 60, 48 Pac. 1014.

ASSESSOR'S RESPONSIBILITY: The assessor is officially responsible for the legal sufficiency of the description of all parcels of real estate returned by him. Upon that official alone devolves the entire responsibility of making out and delivering the roll containing the list of taxable lands. Accordingly, where a parcel of land is deemed to be described in the assessor's return, but such description is inherently and fatally deficient, the same cannot be rendered valid and sufficient by showing that it corresponds to a description furnished the assessor by the owner, or by some one else. The public and bidders at tax sales, as well as owners, are interested in the description of real estate in tax records and tax titles. Such descriptions, to be sufficient, must point out parcels of land clearly and distinctly by the use of terms commonly understood.—*Power v. Bowdle* (N. Dak.), 21 L. R. A. 328, 54 N. W. 404.

ASSESSMENT OF PERSONAL PROPERTY: "Value of personal property exclusive of money and solvent credits, \$15,725," is a sufficient form of assessment.—*City and County of San Francisco v. Pennie*, 93 Cal. 465, 29 Pac. 66; so also, an assessment showing neither the number, kind, amount, nor quality of the personal property, is valid.—*Dear v. Varnum*, 80 Cal. 86, 22 Pac. 76.

VALUATION OF PROPERTY: Where an assessor fails to discriminate between improvements where the owner thereof is also the owner of the land, upon which the same is situate, and those cases where the improvements are upon public land, the appellate court cannot arrive at the conclusion that a want of such discrimination did not mislead him in assessing the property as to value.—*People v. Owyhee Lumber Co.* 1 Idaho, 420.

Section 1349. State Auditor to Print Assessment Roll:

The state auditor may have, each year, such a number of assessment and delinquent assessment rolls printed in such form, appropriate changes being made to adapt the same to the necessities of subsequent and delinquent rolls, and uniformly, stoutly and economically bound and supplied with detached leather alphabetical tabs, in number sufficient to enable him to furnish one of each such rolls, to each county in the state. He shall let the printing and binding of all such rolls in any one year to a single firm or concern at the most reasonable rate obtainable for the work, which, in all cases, must be of good quality. Each assessor in the several counties of the state shall, on or before the first day of May in each year preceding the year for which such roll is required, notify the state auditor of the number of pages required by him in the assessment, subsequent and delinquent assessment rolls of his county, and also of the number of tax statements required by him for the year; and thereupon the state auditor shall have such tax statements so printed and such assessment, subsequent and delinquent assessment rolls printed and bound with the number of pages required by each and the name of the county and the year inserted in the assessment book and tax statement forms to make the same appropriate for each county; and he shall provide that such assessment rolls by him ordered shall be sent by the makers thereof direct to the assessors of the several counties; payment therefor to be made by the state and shall be collected and paid for as other claims against the state are. The state auditor shall certify to the state board of equalization the amount for which each county is chargeable on account of such assessment roll and tax statement which shall be the actual cost thereof to the state; and thereupon the state board shall add such amounts to the amount of state tax apportioned to such county to be paid as a part of such state tax.

1901, 6th Ses. p. 268, Sec. 90.

Section 1350. Affidavit of Assessor: On or before the first day of July in each year, the assessor must complete his assessment roll. He and his deputies must take and subscribe an affidavit in the assessment book, to be substantially as follows: I
..... assessor (or deputy assessor, as the case may be) of county, do swear that between the second Monday in January and the first day of July, nineteen hundred and I have made diligent inquiry and examination to ascertain all the property real and personal within the county, (or within the sub-division thereof assessed by me as the case may be) subject to assessment by me, and that the same has been listed and assessed on the assessment book, equally and uniformly, according to the best of my judgment, information and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill will or otherwise; nor allowed any one to escape a just and equal assessment through favor or reward or otherwise. But the failure to take or sub-

scribe such affidavit as required by this title, shall not in any manner affect the validity of the assessment. The making of such affidavit is declared, however, to be a duty pertaining to the office of every assessor in this state, and when the same is to be made by the deputy assessor, it shall be the duty of the assessor to have the same properly made. In every case where the said affidavit is omitted from any assessment roll so completed as aforesaid, the board of equalization of the county must require the assessor to make the same or to have the same made by the deputy assessor and upon the refusal or neglect of such assessor to supply such affidavit forthwith the chairman of the board of county commissioners must immediately file in the district court of the county an information, in writing, verified by his oath, charging such assessor with refusal or neglect to perform the official duties pertaining to his office, and thereupon he must be proceeded against as in such case provided by law.

1901, 6th Ses. p. 268, Sec. 91.

ASSESSMENT BOOK: When certified, the assessment book is the only evidence of the assessor's act and intentions.—*People v. San Francisco Savings Union*, 31 Cal. 132; and it is the only record of the final judgment as to the value of the property.—*People v. Stockton & Copperopolis R. R. Co.* 49 Cal. 414. The taxpayer cannot com-

plain of the omission of the assessor to properly return the roll.—*People v. Eureka Lake & Y. C. Co.* 48 Cal. 143. An assessment of property is completed when the persons and property to be taxed have been listed and the amounts to be collected have been estimated.—*State v. Johnson*, 16 Mont. 570, 41 Pac. 706.

Section 1351. Delivery of Assessment Book. Notice of Equalization:

As soon as completed, the assessment book, together with the statements, must be delivered to the clerk of the board of county commissioners, who must immediately give notice thereof, and of the time the board will meet to equalize assessments, by publication in a newspaper if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

1901, 6th Ses. p. 269, Sec. 92.

ASSESSOR HAS NO CONTROL OVER LIST AFTER DELIVERY: Under the statute requiring the assessor to deliver to the county clerk the assessment roll consisting of items in form substantially the same as required by section 1348 of this Code, the supreme court of Oklahoma has held that the provisions were mandatory so far as they provide for the listing and valuing of property separately, and that where three lots lying contiguous in the city are listed separately but all valued together, such listing and valuation do not constitute a valid assessment, and the sale of such lots under such assessment is absolutely void.—*Frazier v. Prince (Okl.)*, 58 Pac. 751. After the assessor has returned his assessment and has filed his lists and books with the clerk of the board of equalization, an assessor cannot alter

his assessment.—*Lewis v. Bishop*, 19 Wash. 312, 53 Pac. 165; further, it is held that after the duties of the assessor have ceased, no judgment of the court can clothe him with authority to amend, alter, or modify his assessment.—*Johnson v. Malloy*, 74 Cal. 430, 16 Pac. 228; but mere removal of the assessment book over Tuesday from the custody of the board of equalization, was held not to invalidate the assessment.—*Lahman v. Hatch*, 124 Cal. 1, 56 Pac. 621. The notice required by statute to be given by the assessors, of the completion of the assessment roll, and the opportunity to taxpayers to examine the roll and correct errors therein, is essential to the validity of the tax, because it is one of the things to be done by the assessors, to obtain jurisdiction over the subject.—*Wheeler v. Mills*, 40 Barb. (N. Y.), 644.

Section 1352. Failure to Complete Assessment, Penalty: Every assessor who fails to complete his assessment book forfeits the sum of one thousand dollars, to be recovered on his official bond for the use of the county.

1901, 6th Ses. p. 269, Sec. 93.

Section 1353. Only One Description Necessary: Lands once described on the assessment book need not be described a second time in the same year, but any person claiming the same and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land is assessed.

1901, 6th Ses. p. 239, Sec. 13.

Section 1354. Assessor and Sureties Liable for Neglect: The assessor shall be liable to the county, on his official bond and upon any bond given by him under the provisions of this title, to be recovered by an action thereon, for the amount of the taxes on real and personal property assessed by him and not collected as provided by law; also for all taxes on property within his county which through his wilful failure or neglect is unassessed, and the prosecuting attorney must, as soon as any liability hereunder attaches, commence an action on the assessor's bond for the amount of taxes lost from either or both such causes.

1901, 6th Ses. p. 291, Sec. 185.

Cited in *Erwin v. Hubbard*, Assessor (Idaho), 37 Pac. 274.

Section 1355. Judgment in Action Against Assessor: On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

1901, 6th Ses. p. 291, Sec. 185.

Section 1356. Assessment of Ditches, Toll Roads: Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon or turnpike toll road must be assessed the same as real estate by the assessor of the county, at a rate per mile for that portion of such property as lies within his county and extended on the assessment roll as improvements on real estate indicating by initials the kind of improvements.

1901, 6th Ses. p. 239, Sec. 14.

TOLL ROAD: Where a right of way over public domain of the United States is accepted by a toll-road company, and the company constructs and maintains a toll-road, such road, including road bed and right of way, is

the "property" of the company within the meaning of the taxation laws and is taxable in the county in which it is located.—*Estes Park Toll-Road Co. v. Edwards*, 3 Colo. Ap. 74, 32 Pac. 549. The section cited in *Palmer v. Pettin-gill* (Idaho), 55 Pac. 653.

Section 1357. Who May Assess Railroad Tracks, Etc.: The state board of equalization shall have exclusive power to assess and value for purposes of taxation all telegraph and telephone lines and the "railroad track" and "rolling stock" and franchise of all persons, companies, or corporations owning, operating or constructing any telegraph, or telephone lines, or railroads wholly or partly within this state.

For the purposes of this title "railroad track" shall be deemed to

include the right-of-way, station, and other necessary grounds, superstructures upon such right-of-way, station, and other grounds, and all other immovable property used, operated, or occupied by any person, company, or corporation, owning, operating, or constructing any line of railroad, wholly or partly within this state, and reasonably necessary to the maintenance and operation of such road.

For the purposes of this title "rolling stock" shall be deemed to include all movable property owned, used, occupied, or operated in connection with any railroad, wholly or partly within this state.

All property belonging to any person, company, or corporation, owning, operating or constructing any railroad wholly or partly within this state, not included within the terms "railroad track" or "rolling stock" namely, property not reasonably necessary for the maintenance and successful operation of such road, consisting of vacant lots and tracts of lands, and lots and tracts of land together with the buildings thereon used for non-railroad business purposes; also tenement and residence property (except section houses); also hotels and eating houses situate more than one hundred feet from main line track shall be assessed by county assessors as other property is assessed in this state.

1901, 6th Ses. p. 257, Sec. 74.

CONSTITUTIONALITY OF SECTION: California has a constitutional provision similar to ours which prohibits the legislature from passing special laws for the assessment and collection of taxes. The California court held that the revenue law which provides a mode for the collection and assessment of taxes on railroads, different from that found in the general law, to be in conflict with the said constitutional provision.—*People v. C. P. R. Co.* 83 Cal. 393, 23 Pac. 303; but this point was expressly overruled in the case of *People v. C. P. R. Co.* 105 Cal. 576, 38 Pac. 905, which case holds the act to be constitutional and valid. Where machine and repair shops are situated on land other than the right of way, but are connected with the main line by side track, held, that under Sec. 1463, Rev. St. 1887, they should be assessed by the local assessor rather than by the territorial board of equalization.—*O. S. L. R. R. Co. v. Yeates*, 2 Idaho, 365, 17 Pac. 457. Likewise it was held in California that the local assessors must assess the steamers of the C. P. Railroad Company plying on the bay of San Francisco.—*San Francisco v. C. P. R. R. Co.* 63 Cal. 467.

California has further held that this provision in respect to the assessment of railroads by the state board of equalization is not in conflict with the constitutional provision against depriving any person of equal protection of the laws. The fact that one kind of property is to be valued by one officer and that a different agency is to ascertain the value of another kind of property, each agency clothed with the duty of ascertaining the actual value, does not operate to deprive the owner of either kind of property of legal protection.—*San Francisco & N. P. R. R. Co. v. State Board of Equalization*, 60 Cal. 12.

VALUE, HOW DETERMINED: The earning capacity of a railroad is the main consideration, though perhaps not the only one, in determining the taxable value of a railroad which could be replaced for much less than its original cost, where the law requires its assessment like other property at its cash value, defined as the amount at which it would be appraised in payment of a just debt from a solvent debtor.—*State v. Virginia & T. R. Co.* 23 Nev. 283, 35 L. R. A. 759, 46 Pac. 723.

Section 1358. Real Estate of Railroad, Assessment of: Real estate, and improvements thereon, together with all furniture, fixtures, or other personal property belonging to any telegraph, telephone or railroad company, except such as is enumerated as being exclusively subject to assessment by the state board of equali-

zation, shall be assessed by the assessor of the county for the state, county, city, town, village and independent school district, authorized by law to collect revenue as provided herein, in which such property is situated.

1901, 6th Ses. p. 239, Sec. 12.

Section 1359. Officer of Railroad, Etc., to Make List: The president, secretary, superintendent, or other principal accounting officer of any person, company or corporation, owning, constructing or operating any telegraph or telephone line or railroad wholly or partly within this state shall list for assessment and taxation all the following described property belonging to, owned, occupied or operated by such person, company or corporation in this state, viz: The whole number of miles of telegraph or telephone line, the number of wires, the number of "instruments," the number of miles of railroad track (main, side and second tracks and turnouts being separately stated) the property held for right of way, the amount and character of improvements, and the stations located on the right of way; and under the head of "rolling stock" shall list all movable property owned, used, occupied or operated in connection with any railroad, wholly or partly within this state.

Such lists shall specifically show the number of miles of such telegraph and telephone line or of "main track" in each county, district, city, and incorporated town or village through which such line or railroad passes. And all such lists shall be verified by the oath of such president, secretary, superintendent, or other principal accounting officer making the same.

1901, 5th Ses. p. 258, Sec. 77.

STATEMENT NOT BINDING: The sworn statement required by statute of the president of a railroad corporation is not binding on the state board

of equalization and may be disregarded by it in the assessment.—San Francisco & N. P. R. R. Co. v. State Board of Equalization, 60 Cal. 12.

Section 1360. Officer Neglecting to List, State Board Shall Assess: In case the president, secretary, superintendent, or other principal accounting officer, of any person, company or corporation owning, operating or constructing any telegraph or telephone line or railroad wholly or partly within this state, fail, neglect or refuse to forward to the state auditor the list required by section 1359 by or before the second Monday of August of each year, then and in that case, the state board shall proceed to assess and value, and shall assess and value the property of such persons, company or corporation.

1901, 5th Ses. p. 258, Sec. 77.

***STATEMENT NOT CONCLUSIVE:** The statement of a corporation as to value is not conclusive upon the state board of equalization. The board may use the statement as a basis, but its duty is to assess all of the property at

its actual value. If the statement is not filed, the valuation of the board is final and conclusive.—San Francisco & N. P. R. R. Co. v. State Board of Equalization, 60 Cal. 12.

*Valuation, how determined: See note to Sec. 1357.

Section 1361. Valuation Apportioned to Counties: The state board shall determine the total value of each telegraph or telephone line and of all instruments used in connection therewith, and shall

apportion such total value among the several counties into or through which such line passes, in the proportion which the number of miles of such line situated in each of such counties respectively bears to the entire length of such line within the state.

And the said board shall determine the total value of each railroad by adding together the value of the franchise "railroad track" and "rolling stock" thereof, and shall apportion such total value among the several counties into or through which the main line of such railroad passes, in the proportion to the total length of such line in the several counties respectively.

After the board shall have determined such total valuation as aforesaid, said board shall assess such telegraph, telephone and railroad property for each mile thereof; which assessed value per mile shall be determined by dividing the total valuation, as determined by said board, by the number of miles of main line, or main track, within the state.

1901, 6th Ses. p. 259, Sec. 78.

CONSTITUTIONALITY OF SECTION, JURISDICTION OF COMMISSIONERS: The statute providing for the assessment of railroads as a whole and apportionment among the counties in proportion to the miles of track, held, not in conflict with the provision of the Colorado constitution that all taxes shall be uniform upon the same class of subjects and shall be levied and collected under general laws.—*Ames v. People* (Colo.), 56 Pac. 656. Under the California constitution providing for the assessment of all railroads operating in more than one county and for apportionment to the counties and cities in which such railroads are situated in proportion to the number of miles of railway in such counties or cities, by the state board of

equalization; in making an assessment to take the place of an invalid assessment, the board are required to make their apportionment to the counties as they existed at the time of the invalid assessment and not as they existed at the time of the reassessment.—*San Diego County v. Riverside County* (Cal.), 58 Pac. 81. The state board of equalization has authority to demand the facts and to apportion the tax on rolling stock among the various counties of the state.—*Salt Lake County v. State Board of Equalization* (Utah), 55 Pac. 378. Moreover, county boards have no jurisdiction to raise or to lower an assessment by the state board of equalization on railroads which run through more than one county.—*People v. Sacramento County*, 59 Cal. 321.

Section 1362. Duty of State and County Auditors Respecting Railroads, Etc.: When the total valuation of telegraph, telephone and railroad property has been determined and assessed and apportioned as provided in section 1361, the state auditor shall prepare a statement to be sent to each county in which such telegraph, telephone or railroad property may be situated, specifying the number of miles of such line or road within the county, the assessed value per mile and the number of miles of main line or main track in each district, city, or incorporated town therein. Such statement shall be certified by the state auditor and sent to the county auditor of each county in which any part of such telegraph, telephone or railroad property may be situated, and shall be sent at the same time that the statements provided for in section 1386 are transmitted.

The county auditor of each county to which such statement is sent shall immediately enter in the assessment book for that year the amount of such telegraph, telephone or railroad property so certified, and the assessed value thereof to the proper owner, and said county

auditor shall also divide and adjust among the several districts, cities and incorporated towns and villages and independent school districts and cities, towns and villages, organized under special laws or charters that are authorized as provided by law to adopt the provisions of this title, the proper amount and value of such property falling within each respectively; and for such purpose the auditor shall be furnished each year by the assessor with a statement of the number of miles of main track within each such revenue district.

1901, 6th Ses. p. 259, Sec. 79.

Section 1363. Meeting of Board to Assess Railroads, Etc.: The state board shall meet for the purpose of valuing and assessing telegraph, telephone and railroad property on the second Monday of August of each year, and shall continue in session from day to day thereafter until such valuation and assessment is completed.

-901, 6th Ses. p. 258, Ses. 75.

Section 1364. Raising Valuation of Railroads, Etc.: The state board of equalization is hereby directed and instructed to assess and raise the valuation of railroad, telegraph, and telephone property throughout the state in proportion to the amount that the valuation of other property is increased, under the provisions of this title.

1901, 5th Ses. p. 456.

Section 1365. Live Stock Ranging in Different Counties: All live stock that is kept, driven or pastured, or that is suffered to range or graze, in more than one county of the state, during the fiscal year shall be subject to taxation in each of the counties in which it is kept, driven or pastured or suffered to range or graze, or in which it does range or graze, in proportion to the time it is so kept, driven or pastured or suffered to range or graze, or does range or graze, in such county in any fiscal year, as hereinafter provided.

1901, 6th Ses. p. 240, Sec. 16.

Section 1366. Assessment of Live Stock in Home County: All live stock shall be assessed for taxation in the county in which it is found at the time fixed in this act to determine in what shall be assessed in any county in which it may be found and first assessed, which county in which such live stock is assessed, or liable to assessment, shall be known as its home county; and at the time of such assessment the owner of such live stock, or his agent shall make and deliver to the assessor a written statement under oath showing the number, description and different kinds of such live stock within the county, belonging to him or under his charge, with their marks and brands when practicable, and showing the full time during the current fiscal year that such live stock, and every part, portion and kind thereof, has been and will be within the county and such live stock and the owner thereof, shall be liable to said county for the taxes thereon at the rate of levy for all state, county and other purposes, as other property is liable and the owner thereof shall, unless sufficient

real estate ample to secure the same is liable therefor, pay the assessor at the time of such assessment the whole amount of said taxes for the full year, and take his receipt therefor.

1901, 6th Ses. p. 239, Sec. 15.

Section 1367. Assessment of Live Stock in Other than Home County: Whenever any such live stock is removed or kept, drive nor pastured, or suffered to range or graze or does range or graze, in any county other than its home county, the owner thereof or his agent shall, within ten days from the time any such stock enters such other county, notify the assessor of said county that he has entered or intends to enter said county, stating the date of said entry, the number, description and different kinds with their marks and brands, when practicable, of such live stock in his possession or under his control or charge within said county, and he shall make and deliver, and it shall be the duty of such assessor to demand a written statement, under oath, similar in all respects as far as applicable to the statement required in the home county, showing the full length of time during the current fiscal year, that such live stock and every part, portion and kind thereof has been and will be within such county, that the taxes on such live stock for the current fiscal year have been fully paid or secured in the whole county, naming the same, and shall produce for the inspection of the assessor or his deputy, upon demand, the receipt for said taxes, or in case the same have been secured, a certificate showing that the same has been done, and such live stock and the owner thereof shall be liable to said county, for the part or portion of the taxes thereon, for the full length of time that such live stock has been and will be within said county, during said fiscal year, according to the rate of levy in said county for all state, county or other purposes, as other property in said county is liable; and such owner shall, before any live stock shall leave said county, pay said taxes to the assessor of said county, or shall secure the payment of the same to the satisfaction of the assessor, and take his receipt or certificate therefor. If any such live stock shall not be removed from any county on or before the expiration of the time mentioned in any such written statement as the time during which they will remain in said county, and for which time taxes have been paid or secured in said county, or before the expiration of the time for which the taxes have been paid on the same, it shall be the duty of the owner or his agent to at once seek the assessor of the county, and make an additional statement, under oath, similar to that hereinbefore provided for, and stating the additional time which such live stock has been and will remain in said county within the fiscal year, and he shall at once pay or secure the proportional tax for such additional time and take the assessor's receipt or certificate therefor.

1901, 6th Ses. p. 240, Sec. 17.

Section 1368. Payment on Stock for Balance of Year: As soon as any such live stock is returned to its home county, or if not so returned, then before the expiration of the fiscal year the owner thereof to whom they were first assessed, shall present the re-

ceipt or receipts received by him or any other person to whom he may have sold, showing what part or parts of the fiscal year for which taxes have been paid in other counties under and in pursuance of the provisions of this title, and such owner shall be entitled to and receive from the treasurer of said home county, and out of the migratory stock fund, that part of the amount of taxes paid on such live stock in said home county proportionate as the total periods of time for which taxes have been paid in other counties within the state, as shown by the receipts therefor presented, is to the whole year.

1901, 6th Ses. p. 241, Sec. 18.

Section 1369. Taxes on Live Stock a Personal Debt:

All taxes that shall become due to any county under these provisions shall be a personal debt and demand against the owner to whom the property was first assessed, and may be enforced by any proper action in the name of the county, in any court of competent jurisdiction, and secured by attachment or other provisional remedy, which may be issued without undertaking or other security by or on behalf of the county; and said taxes shall be a first lien upon such live stock wherever found within the state, and a lien upon all real estate belonging to any owner of such live stock, situated within the county to which such taxes are due and payable, and such liens shall only be discharged by the actual payment of the taxes.

1901, 6th Ses. p. 244, Sec. 25.

Section 1370. Paying Rebates on Live Stock: For the purpose of meeting and paying such rebates, as mentioned in section 1368 the assessor of each county in the state is hereby directed, at the time of his regular monthly settlement with the treasurer, to separately deposit with him all moneys collected as taxes on live stock, except when such money has been finally paid as a settlement of the amount of tax due, from which no rebate is to be thereafter deducted, and accompany such separate deposits with the auditor's certificate, which shall set out the amount of such tax, the number, kind, description and owner and person in charge of such live stock and the length of time for which such tax is paid, which amount shall be charged by the auditor and credited by the treasurer to a special fund hereby created and which shall be known as the migratory stock fund; such fund shall be reported in all reports of the auditor and treasurer, but the funds therein shall be considered as deposit funds and shall not be included in such reports or balances therein as public money; in all cases where a rebate for live stock is made by payment to the person by whom the tax on such live stock for the year was originally paid, such payment must be made upon the certificate of the assessor which shall show the name of the person entitled thereto, the number, kind and description of live stock, the time for which such rebate is allowed, and the county or counties in which taxes on such live stock have been paid or secured other than the home county, and upon the order of the auditor.

On the first Monday in December of each year the assessor shall report to the auditor the net amount of such migratory stock fund and

the amount thereof due the several revenue districts in his county, and thereupon the auditor shall apportion the net amount in said fund amongst the several funds entitled thereto and charging the migratory live stock fund therewith, and shall certify such apportionment to the treasurer who shall transfer the balance in said fund accordingly and credit the migratory stock fund with such net amount; after said first Monday in December no rebates on such fund or for taxes on live stock shall be allowed.

1901, 6th Ses. p. 241, Sec. 19.

Section 1371. Stationery and Stamps for Assessor:

There must be allowed to the assessor and collector by the board of county commissioners, postage stamps in the amount of twenty-five dollars, and necessary blank-books, blanks, and stationery for the use of his office in each year, not otherwise in this title provided for.

1901, 6th Ses. p. 247, Sec. 30.

CHAPTER LIV.

EQUALIZATION OF TAXES.

Section.

DUTIES OF COUNTY BOARD.

- 1372. County commissioners to equalize. Meeting.
- 1373. Power to determine complaints.
- 1374. No reduction except upon application.
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- 1381. Assessor liable for property escaping taxation.

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DUTIES OF STATE BOARD OF EQUALIZATION.

- 1384. Meeting, proceedings. Delayed abstracts.

- 1385. Method of equalizing taxes.

- 1386. Duty of state and county auditors. Rules by board.

- 1387. Assessment completed when. State tax by counties.

DUTIES OF COUNTY BOARD.

Section 1372. County Commissioners to Equalize.

Meeting: The board of county commissioners of each county within the state shall meet on the second Monday in July, of each year, to examine the assessment roll, and shall equalize the assessment of property of the county and of any city, town, village and independent school district authorized by law to collect revenue as in this act provided, for taxation within their respective counties. It is hereby made the duty of the board of county commissioners, at such meeting to enforce and compel an assessment of the property within their respective counties, and in any such city, town, village and independent school district at a fair cash value, and in so doing such board of county commissioners shall examine such assessment roll, name by name, together with the valuation of property of each taxpayer assessed, and shall raise or cause to be raised any assessment of property, which in the judgment of the board has not been assessed at a fair cash value. Such board must continue in session, for the purpose of equalizing such assessment, until the business of equalization is disposed of.

1901, 6th Ses. 250, Sec. 53.

PROOF OF ACTION OF BOARD:

In an action to enjoin an erroneous increase of assessment, where the board of equalization offered to prove the loss of its minutes, it was not error to re-

ject the offer, where the minutes of the county commissioners contained the entry upon the authority of which the increased assessment was made.—*Peterson v. First N. Bank* (Kan.), 56 Pac. 146.

Section 1373. Power to Determine Complaints: The board has power to determine all complaints in regard to the assessed value of property, and may, except as prohibited in this title, correct any valuation by adding or deducting such sums as may be necessary to make it conform to the actual cash value.

1901, 6th Ses. p. 251, Sec. 54.

LEGALITY OF EQUALIZATION:

The board of equalization cannot increase the valuation of the property of any individual in excess of its true cash value, and if it does, equity will enjoin the tax on the excess.—*Lee v. Mehew* (Okla.), 56 Pac. 1046. If part of a tax complained of be legal, that portion must be first paid before the person will be heard to complain of the other portion as illegal.—*S. J. Gas Co. v. January*, 57 Cal. 614. One whose property is not assessed by applying to the board of equalization.—*People v. Whyler*, 41 Cal. 351.

APPEALS: No appeal will lie from an order of the county board of equalization reducing the amount of the assessment of taxes.—*General Custer Mining Co. v. Van Camp*, 2 Idaho, 44, 3 Pac. 22. In an appeal from the board of equalization to the district court and upon proceedings in the supreme court upon a writ of error, it is not sufficient ground for the dismissal of the writ that there were no allegations in it pleading payment or tender of the taxes as fixed by the board of county commissioners.—*Van Camp v. Board Commissioners of Custer Co.* 2 Idaho, 33, 2 Pac. 721.

GENERAL DISCUSSION OF SECTION: Where the statute provides that the board of equalization "shall meet on the first Monday in June in each year for the correction of errors in the assessment of personal property, and shall continue in session from time to time until such errors brought to their notice shall be corrected; provided, however, that they shall not sit after the third Monday in June;" and where such board met and held sessions on the first and third Monday of June only, but between such sessions, a committee of the board received applications for the correction of assessments, and took testimony, all of which was, on said last session, submitted to

and acted on by the board, and when the board closed its session it did not appear that any valuation of personal property was erroneous: Held, that this was a proper and legal mode of action on the part of said board.—*People v. McCreery*, 34 Cal. 432. An order of the board of equalization adding to the assessed valuation of a person's property, should show upon its face that it is merely increasing the valuation of the particular property placed on the assessment roll by the assessor.—*People v. Reynolds*, 28 Cal. 108. The board of equalization, in passing on the question as to whether an assessment is too high or too low, acts in a judicial capacity, and its decision is an adjudication.—*People v. Goldtree*, 44 Cal. 323. In order to give the board of equalization jurisdiction to increase the valuation of property beyond the amount at which it has been assessed, the filing of a complaint is necessary.—*People v. Goldtree*, 44 Cal. 323. Where the board of equalization makes an order increasing an assessment when no complaint has been filed, and the party assessed appears and moves to set aside the order, such appearance does not confer jurisdiction by relation, and a refusal to set aside the order does not make it valid.—*People v. Goldtree*, 44 Cal. 323. A complaint of the district attorney filed with the board of equalization which "complains of the assessment set opposite each name on the assessment list, and prays the board to hear evidence in each and every case, and every name on said assessment list, as to the value of property therein assessed, and to change the value as to them may seem just, and that the valuation may be reduced or raised as to them shall seem just or equitable," states no facts and is nugatory and insufficient to give the board jurisdiction to increase the assessment.—*People v. Flint*, 39 Cal. 670.

Section 1374. No Reduction Except upon Application: No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with

the board a written application therefor, verified by his oath, showing the facts upon which it is claimed such reduction should be made.

1901, 6th Ses. p. 251, Sec. 55.

COURT PROCEEDINGS: Where a mining company appeals to a county board of equalization from an assessment of taxes levied against it and the board orders a reduction in the assessment, and from this order an appeal is taken by a taxpayer to the district court resulting in the reversal of the action of the county board, a writ of error will lie at the instance of the mining company to review the action of the district court.—*Van Camp v. Board Commissioners of Cus-*

ter County, 2 Idaho, 33, 2 Pac. 721; likewise, although a property owner may maintain injunction against a tax imposed upon his property by reason of the action of the county board of equalization in increasing the valuation of such property beyond its actual value, he cannot enjoin a county clerk from spreading on the rolls of the county, the increase of valuation ordered by the board, on property not owned by him or in which he has no interest.—*Caffrey v. Overholser* (Okl.), 57 Pac. 206.

Section 1375. Examination of Applicant: Before the board grants the application or makes any reduction applied for, it must first examine, on oath, the person or agent making the application touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

101, 6th Ses. p. 251, Sec. 56.

Section 1376. Other Witnesses and Evidence: Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending as in its discretion it may deem proper.

1901, 6th Ses. p. 251, Sec. 57.

Section 1377. Assessor Must be Present: During the session of the board the assessor and any deputy whose testimony is needed must be present, and may make any statement or introduce and examine witnesses on questions before the board.

1901, 6th Ses. p. 251, Sec. 58.

Section 1378. Examination of Records. Property not Assessed: The board may require the attendance of the county recorder, and he is directed to furnish the board abstracts and all other information which may be gained from the records in his office when so requested. The board may use information gained from such abstracts, or records, or elsewhere in equalizing the assessment of the property of the county; and it shall be the duty of the assessor to enter upon the assessment book any property which has not been previously assessed by him; and any such assessment made and entered into the assessment book, as prescribed in this section, has the same force and effect as if made and entered by the assessor before the delivery of the assessment book to the clerk of the board. The tax collector must collect such subsequent assessments in the same manner and receipt and account for the same in the same manner as assessments placed on the assessment book prior to its delivery to the clerk of the board.

1901, 6th Ses. p. 257, Sec. 59.

Section 1379. Power of Board Over Assessments: During the session of the board of county commissioners sitting as a

board of equalization, it may direct and require the assessor to assess any taxable property that has escaped assessment, increase any valuation, or add to the amount, number, quantity, or value of any property, when a false, inaccurate or incomplete list has been furnished or rendered; and in making such alterations, additions or new assessments, he shall note the previous assessments "cancelled" and such new entries, with the alterations and additions shall be deemed the true assessment of the property affected thereby. When any assessment made by the assessor is deemed by the board so incomplete or inaccurate as to render doubtful the collection of the tax thereon, the board shall direct him to make a new assessment thereof, as heretofore provided, marking such defective assessment "cancelled."

1901, 6th Ses. p. 252, first part Sec. 60.

POWERS OF BOARD: It is no justification that the conclusion of the board was just.—*Lewis v. Bishop*, 19 Wash. 312, 53 Pac. 165. If the board raised the tax without proper notice to the owner, their action is void and the assessment remains in full force.—*Patten v. Green*, 13 Cal. 325. If the assessor fixes the assessed value of the property of a person or firm, and the board of equalization afterwards, instead of adding to the valuation so assessed, makes a new assessment, this new assessment is void, even if the party interested receives notice and appears, and evidence is taken.—*People v. Reynolds*, 28 Cal. 108. The board of equalization has no power to raise the valuation of land as fixed by the assessor without notice to the owner. The general notice of the sitting of the board by publication, does not amount to the

notice required.—*Patten v. Green*, 13 Cal. 325. It is not necessary, where a taxpayer appears before the board of equalization in pursuance of a notice to show cause why corrections should not be made in his assessment, and files an answer in response to such notice that a reply to such answer be filed, since in such proceedings the rules of practice in civil cases do not apply.—*Poppleton v. Yamhill County*, 18 Ore. 377, 23 Pac. 253, 7 L. R. A. 449. The board may direct the assessor to assess any taxable property that has escaped assessment, increase any valuation, or add to the amount, number, or quantity of the property of any individual or corporation within their jurisdiction. They may also make and enter new assessments.—*Orr v. State Board of Equalization*, 2 Idaho, 923, 28 Pac. 416.

Section 1380. Notice to Person Whose Assessment is Altered: All persons whose assessment is altered, modified or effected in the amount or valuation of property charged to them, shall be notified by the clerk of said board, by letter deposited in the United States mail, postpaid and addressed to such person interested, at last ten days before the final action is taken in fixing and equalizing such assessment, of the day fixed when he may be heard upon the matters affecting the assessment of his property for taxation, which shall be on the fourth Monday in July of each year, or as soon thereafter as he can be heard or his matter be reached.

1901, 6th Ses. p. 252, last part Sec. 60.

Section 1381. Assessor Liable for Property Escaping Taxation: If any property shall ultimately escape taxation for any year, and such fact shall be made known to the board of county commissioners before final settlement and payment of salary due to any assessor during whose administration such property was not assessed, it shall be the duty of the board to deduct from any amount when due, or to become due such assessor, as salary or otherwise, the amount of taxes on the property not assessed: *Provided, however,* that the assessor shall be subrogated to the lien of the state and

county for such taxes, and may re-imburse himself for the amount of such taxes by enforcing such lien in a proper action, or may have a personal action for the recovery of same with costs of such suit.

1901, 6th Ses. p. 252, Sec. 61.

Section 1382. Record of Changes by Board: The clerk of the board must record in a book to be kept for that purpose all changes, corrections and orders made by the board, and also all proposed changes and corrections as to which notice is required to be given, and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the board.

1901, 6th Ses. p. 253, Sec. 64.

Section 1383. Second Meeting of Board. Auditor's Abstract: On the fourth Monday of July the board of county commissioners must meet and continue in session until all the parties appearing have been heard, and until all the proposed additional assessment, changes and corrections have been acted upon, and the board may subpoena witnesses and hear evidence as provided upon application for reduction of assessments; and the clerk of the board must keep a record of their proceedings, and as auditor he may receive from the tax collector the original assessment book, and may retain changes and corrections ordered by the board, and at the same time it shall be the duty of the county auditor to prepare an abstract upon blanks furnished by the state board of equalization showing the total number of items or pieces of property and the total value thereof, in each class, as contained in said assessment book as corrected by the board of county commissioners, or in any subsequent assessment made therein or any other assessment book and transmit such abstract by registered mail to the state auditor on or before the first Monday in August; *Provided*, That the abstract of any subsequent assessment shall be sent in like manner at the earliest possible time subsequent to the date of the last assessment of property made in such county for such year. The form of such blank herein provided for shall be prepared in strict conformity with the classification of property in the assessment roll form herein provided for.

1901, 6th Ses. p. 254, Sec. 65.

MAJORITY MAY ACT: The action of a majority of all the members of a state board of equalization is the action of the board, where every member has an opportunity by due notice to attend the meeting, though some of the members be not present.—*Williams v. School District No. 1* (1838), 21 Pick. 75, applied; *People v. Lothrop*, 3 Colo. 428.

***RIGHT OF TAXPAYER:** Every citizen and taxpayer has the right to bring a proper suit to determine whether any board or officer having any authority connected with the levy and assessment of taxes has performed his duties as the law requires.—*Orr v. State Board of Equalization*, 2 Idaho, 923, 28 Pac. 416.

DUTIES OF STATE BOARD OF EQUALIZATION.

Section 1384. Meeting. Proceedings. Delayed Abstracts: The state board of equalization shall meet at the state capital on the second Monday in August of each year, and if all the

abstracts of original assessments hereinbefore provided for and required to be transmitted to the state auditor have been received, such abstracts shall be laid before said board, which shall then and there proceed to equalize the valuation of property throughout the state, as hereinafter provided.

In case the said abstracts have not all been received by the state auditor by or before the second Monday in August, the said board shall adjourn from day to day until said abstracts are received, and may issue subpoenas for any officer or officers by this title required to transmit such abstracts, and who have failed to transmit the same, requiring such officer or officers to appear before the board forthwith to produce the abstracts herein provided for. The sheriff of Ada county is hereby designated as the officer by whom such subpoenas shall be served, and for such services said sheriff shall be paid the same compensation as is by law provided for similar services in civil cases.

The officer so failing to transmit such abstract, shall be liable on his official bond for the compensation paid said sheriff.

1901, 6th Ses. p. 254, Secs. 67, 68 and 69.

Section 1385. Method of Equalizing Taxes: The state board shall equalize the valuation of property throughout the state as follows:

First.—By classes, as shown by the abstracts transmitted from the various counties, county by county, and in such equalization said board shall have power to increase the total valuation of any class of property in the county as shown by the abstracts from that county when in the opinion of the board the valuation of that class, appearing in said abstract, is not just and equal as compared with the valuation of other classes of property in that county, or in other counties, because of its being less than the true valuation, as determined by such comparison and the said board shall have power to decrease the valuation of any class of property, when in the opinion of the board the valuation of that class of property, appearing in the abstract is not just and equal, as compared with other classes of property in that county, or other counties, because of its being in excess of the true valuation as determined by such comparison.

Second.—The state board shall have power to add to, or deduct from the aggregate valuation, as shown by such abstracts, of all property in any county, such a percentage of such aggregate valuation as may be necessary in the opinion of the board to establish uniformity and equality of valuations among the several counties of the state.

The rate of the percentage of increase or decrease made by the board, either in equalizing among the classes of any county or in equalizing the aggregate of the counties shall, in all cases be even and not fractional. The increase or decrease made by the board in equalizing among the counties by aggregate, shall, in no case increase or decrease the total valuation of the state, as shown by the total sum of all the valuations as stated in the abstracts returned, by

an amount exceeding 15 per centum of said total aggregate valuation of the state.

Third.—The state board of equalization shall have power to require the attendance of the assessors of the various counties of the state at such times and places as may be required by said board to assist the board in its duties and the necessary expenses of said assessors in attending such meetings shall be a county charge.

Fourth.—The state board of equalization for the purposes of considering questions of taxation with the assessors of the several counties of the state, and for such other business as may be brought before the board shall meet on the third Monday in January in each year, and at such other times as the chairman of the board may designate, but no taxes shall be equalized at said meetings.

1901, 6th Ses. p. 255, Sec. 70.

STATE BOARD, DUTIES OF: The state board of equalization acts judicially when exercising the functions conferred upon it by law.—*Orr v. State Board of Equalization*, 2 Idaho, 923, 28 Pac. 416. It is the duty of the state board of equalization to adjust and equalize the valuation of real and personal property among the several counties with the view of apportioning equitably the burden of the state government.—*People v. Lothrop*, 3 Colo. 428. Therefore the state board cannot encroach upon the domain of the county boards in an attempt to adjust and equalize valuations of property as between individuals.—*State v. Thomas*, 16 Utah, 86, 50 Pac. 615. Unless the state board of equalization is shown to have acted wilfully, arbitrarily or fraudulently in the equalization of

values as it pertains to a county, its judgment in relation thereto cannot be disturbed. — *Dayton v. Multnomah County (Ore.)*, 55 Pac. 23. The territorial board of equalization has no power to raise the returns of any county above the actual value of all the property therein contained.—*Weber v. Dillon*, 7 Okl. 54 Pac. 894. Montana, on the other hand, holds that the state constitution, on limiting the rate of taxation to be imposed for state purposes, denies the state board the power to increase the aggregate total by increasing proportionately the valuations of property in the several counties of the state and that the extent of the power of the board is to adjust and equalize the valuation of taxable property among the counties of the state. — *State v. State Board of Equalization*, 18 Mont. 473, 46 Pac. 266.

Section 1386. Duty of State and County Auditors.

Rules by Board: Within five days after the state board shall have completed the equalization of valuations as by this chapter provided, the state auditor as secretary of said board shall transmit by registered mail to the county auditor of each county, a certified statement showing the changes (if any) that have been made by said board in the valuation of any class or of all classes of property in the county to which such statement is sent, or the changes in the aggregate valuation of all property in said county. The county auditor to whom such statement is sent shall forthwith upon receipt thereof proceed to enter in the assessment book of his county for the then current year, the changes (if any) that have been certified in such statement. When the entries herein required to be made by the county auditor have all been made the county auditor shall forward to the state auditor an affidavit setting forth the fact that all changes certified to him by the state auditor have been entered as required by law.

The state board shall prescribe such rules and regulations not inconsistent with the provisions of this chapter, as shall be necessary to carry this chapter into effect; for the government of assessors

in matters affecting the performance of the duties of the state board and for the government of county auditors in the performance of their duties under this chapter; and generally for the government of county assessors and county auditors as may be required in connection with the equalization of valuations by said state board. The said board shall provide for the use of the board, and of county auditors, such forms as are herein not otherwise provided for.

The state board shall keep a record of all its proceedings, which, when the board is not in session, shall be in the custody of the state auditor, and be at all times subject to inspection by the public.

1901, p. 256, Secs. 71, 72 and 73.

Section 1387. Assessment Completed When. State Tax by Counties: The state board of equalization must complete the assessment, valuation and equalization of all property hereinbefore mentioned on the fourth Monday in August of each year, and on that day it shall be their duty to ascertain the total assessed valuation of all property subject to taxation in the state. The state board of equalization shall on that day determine the amount of the state tax which each county must pay to the state by apportioning the aggregate tax among the several counties of the state in the exact proportion that the total assessed valuation of each county, as shown by the assessment roll and subsequent assessment roll thereof for the year next preceding, bears to the aggregate assessment valuation of all the counties of this state for such preceding year; and for the purpose of ascertaining such several and aggregate valuations, the board shall examine the annual reports of valuations made by the county auditors to the state auditor, and such other reports as they may deem necessary.

The amount of state tax so found to be due from each county shall be certified to the county auditors of the several counties by the state auditor, and said county auditors shall file the same with the board of county commissioners.

1901, 6th Ses. p. 260, Sec. 80.

CHAPTER LV.

DUTIES OF COUNTY AUDITOR IN RELATION TO REVENUE.

Section.	Section.
1388. Final corrected entries by auditor.	1391. Auditor's affidavit to assessment book.
1389. Duties of county auditor.	1393. Assessor charged with full amount levied.
1390. Final corrected statement by auditor.	1394. All statements by auditor to be verified by oath.
1391. Statement transmitted to state auditor.	

Section 1388. Final Corrected Entries by Auditor: The county auditor must as soon as he shall receive notice from the state board of equalization by the certificate of the state auditor of any changes in the assessed valuation, and of the assessment of railway, telegraph, or telephone property in said county, make the cor-

rections or changes ordered by the state board of equalization, add up the valuations and enter the total valuation of each kind of property and the total valuation of all property on the assessment book and make report thereof, to the board of county commissioners, for the purpose of making the county and other tax levies thereon, and when such levy or levies have been made, he shall carry out on the assessment book in a separate money column, the totals of taxes composed of state, county and other taxes to each person.

1901, 6th Ses. p. 260, Sec. 82.

Failure of auditor to perform duties,
penalty: Penal Code, Sec. 4797.

Section 1389. Duties of County Auditor: The county auditor shall make and transmit to the state auditor an affidavit showing that such duties have been performed as herein required, and shall also forward to the state auditor a certificate showing the total assessed valuation of such county after such changes have been made, and said auditor shall, upon the correction of the assessment roll after equalization, certify to the governing authority of cities, towns, villages, and independent school districts, situated within his county, and that are authorized by law to collect revenue in the manner provided herein, the total valuation of the property in each such city, town, village and independent school district. When thereafter the authority to which is delegated by law the power to levy taxes in such cities, towns, villages and independent school districts shall file with the auditor the levy made for such cities, towns, villages, and independent school districts, he shall carry out on the assessment roll the total taxes for each of such cities, towns, villages, and independent school districts, as required for state and county purposes.

1901, 6th Ses. p. 261, Sec. 83.

Section 1390. Final Corrected Statement by Auditor: The county auditor must on or before the second Monday of September in each year prepare from the "assessment book" as finally corrected and equalized, and also from all subsequent assessments of such year, a statement showing in separate columns:

1. The total value of all property;
2. The value of real estate;
3. The value of improvements thereon;
4. The value of personal property, exclusive of money;
5. The amount of money.

1901, 6th Ses. p. 261, Sec. 84.

Section 1391. Statement Transmitted to State Auditor: The auditor must, as soon as such statement is prepared, transmit it by mail or express, to the state auditor.

1901, 6th Ses. p. 262, Sec. 85.

Section 1392. Auditor's Affidavit to Assessment Book: On or before the second Monday of September, he must deliver the corrected assessment book to the tax collector, with an affidavit attached thereto, and by him subscribed as follows:

"I....., do solemnly swear that, as clerk of the board of commissioners of.....county, I have kept correct minutes of all the acts of the board touching alterations in the assessment book; that all alterations agreed to and directed to be made, have been made and entered in the book, and that no changes or alterations have been made therein except those authorized; and that as auditor I have reckoned the respective sums due as taxes, and have added up the columns of valuations and taxes, as required by law."

1901, 6th Ses. p. 262, Sec. 86.

Section 1393. Assessor Charged With Full Amount Levied: On delivering the assessment book to the tax collector, the auditor must charge the tax collector with the full amount of the taxes levied and forthwith transmit by mail to the state auditor a statement of the amount so charged.

1901, 6th Ses. p. 262, Sec. 87.

Section 1394. All Statements of Auditor to be Verified by Oath: The auditor must verify by his affidavit attached thereto all statements made by him under the provisions of this title.

1901, 6th Ses. p. 270, Sec. 94.

CHAPTER LVI.

COLLECTION OF PROPERTY TAXES.

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Section 1395. Notice of Time of Delinquency, When Published: Within ten days after the receipt of the assessment book, the tax collector must publish a notice specifying that taxes will become delinquent on the first Monday in January next thereafter, and that unless paid prior thereto ten per cent. penalty will be added thereon, with such other costs as may be provided by law.

1901, 6th Ses. p. 270, Sec. 95.

Failure of tax collector to perform duties, penalty: Penal Code, Sec. 4796.

INJUNCTION REMOVING CLOUD FROM TITLE, ILLEGAL TAX: In-

junction will lie to restrain the collection of an illegal tax where it creates a cloud upon the title of real estate.—*Bramwell v. Guheen* 2 Idaho, 1069, 29 Pac. 110.

Section 1396. Length of Time Published: The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in five public places in the county.

1901, 6th Ses. p. 270, Sec. 96.

NOTICE, PUBLICATION OF: Notice of a tax sale published only in a Sunday newspaper is void unless the

statute authorizes service on Sunday.—*Schwed v. Hartwitz*, 23 Colo. 187, 47 Pac. 295.

Section 1397. Date of Payment Marked: The tax collector must mark the date of the payment of any tax in the assessment book, apposite the name of the person paying.

It shall be the duty of the State Auditor, if required by the county commissioners to have the tax receipts printed; the style of printing such receipts shall be such as to enable the making of a carbon copy of each receipt, which shall remain bound in the receipt book, the original being detachable, and the year for which they are intended must be printed in skeleton type in red on the receipts as well as on the duplicates.

But nothing in this title relating to the furnishing of tax statements, assessment rolls, tax receipts or other forms or books, by the state auditor shall be construed as to prohibit the board of county commissioners, in any county, from themselves contracting for such supplies or any part thereof: *Provided*, All such supplies by them contracted for shall conform in all respects to the requirements of this title. The said receipt shall be in the following form:

Section 1398. Tax Receipts: The said receipts shall be supplied to the assessors of the several counties by the state auditor, in number as ordered by each, at the same time ordering their assessment books and tax statement blanks; and shall be chargeable to the several counties at the actual cost thereof to the state; and the same shall be collected in the manner provided herein for the collection of the amounts chargeable for assessment rolls and tax statement blanks. No receipts for property taxes other than those mentioned in this section must be used or given by the tax collector for the payment of any such taxes.

1901, 6th Ses. p. 270, Sec. 98.

Section 1399. Payment of Taxes on Decedents' Estates: The probate judge must require every administrator and executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

1901, 6th Ses. Sec. p. 271, Sec. 99.

Section 1400. Monthly Settlement of Tax Collector: On the first Monday in each month the tax collector must settle with the county auditor and clerk of any city, town, village and independent school district authorized by law to collect revenue in the manner provided for in this title, for all moneys collected for the state and county, or such city, town, village and independent school district, and pay the same to the respective treasurers of such counties, cities, towns, villages and independent school districts, taking their duplicate receipts therefor; and on the same day must deliver to and file in the office of the auditor the receipts of such treasurers, and a statement under oath showing

1. An account of all his transactions and receipts since his last settlement:

2. That all money collected by him as tax collector has been paid.

1901, 6th Ses. p. 271, Sec. 100.

PAYMENTS AND DEPOSITS BY ASSESSOR: Under an identical statute, it was held that it is the duty of the tax collector to pay to the county treasurer all money collected as taxes for the state and county, even though the tax be illegal and the money paid to the collector under protest.—*San Francisco v. Ford*, 52 Cal. 198. Likewise, a tax collector should pay into the treasury taxes paid to him under protest, even though the taxpayer instructed him to do otherwise.—*Phelan v. City and County of San Francisco*, 120 Cal. 1, 52 Pac. 38. Where the tax collector deposits with the treasurer certain sacks containing money received on taxes generally, the treasurer was not required to segregate the amount to be credited to a certain

fund, or to pay it out to those entitled to the fund until the collector had settled with the auditor and the latter had certified the amount to the treasurer.—*Meyer v. Widber* (Cal.), 58 Pac. 532. (Three of the judges dissent to this opinion.) C., as assessor and tax collector for the county, paid into the bank of B. & Co., a sum of money collected by him as such official and subsequently gave W., the outgoing treasurer of the county, a check for \$50,539.03, and the cashier of the said bank, without the knowledge or consent of the incoming treasurer, passed a portion of the said amount to the credit of the incoming treasurer. Held, that this did not constitute "a deposit on general deposit" by such incoming treasurer.—*Bingham County v. Woodin* (Idaho), 55 Pac. 662.

Section 1401. Penalty of Tax Collector for Failure to Settle: A tax collector refusing or neglecting for a period of five days to make the payments and settlements required in this title, is liable for the full amount of taxes charged upon the assessment rolls.

1901, 6th Ses. p. 271, Sec. 101.

Section 1402. Prosecuting Attorney to Bring Suit Against Collector: The prosecuting attorney must bring suit against the tax collector and his sureties for such amount, and in case of neglect, the board of commissioners may require him to do so; and when the suit is commenced, no credit or allowance must be made to the tax collector for the taxes outstanding.

1901, 6th Ses. p. 271, Sec. 102.

SUIT AGAINST COLLECTOR: In an action against the bondsman of a tax collector, proof that at the end of the term he was in default makes a

prima facie case and the burden of proof of showing payment is upon the defendant.—*Mendocino County v. Johnson* (Cal.), 58 Pac. 5.

Section 1403. When Taxes Delinquent. Penalties: On the first Monday in January of each year all unpaid taxes are delinquent, and thereafter the tax collector must collect thereon for the use of the county and city, town, village and independent school district authorized to collect revenue in the manner provided by this act, a penalty of ten per cent and other costs provided by law.

1901, 6th Ses. p. 271, Sec. 103.

Sponberg v. Oneida County (Idaho), 59 Pac. 532.

TENDER OF A PORTION OF TAX: The tender of a portion of the tax, on

condition that it be received in full satisfaction does not relieve the taxpayer from penalties on the whole for non-payment.—*State v. Carson City Savings Bank*, 17 Nev. 146, 30 Pac. 703.

Section 1404. No Taxes Received, When: No taxes shall be collected or received from the first Monday of January to the fourth Monday of January, inclusive, in each year.

1901, 6th Ses. p. 272, Sec. 104.

Section 1405. Delinquent List: The tax collector must make out and on the fourth Monday in January deliver to the county auditor a complete delinquent list of all property and persons then owing taxes, and must deliver his assessment roll to the auditor to remain on file in his office; he must at the same time certify to the governing authority of cities, towns, villages and independent school districts in his county, authorized by law to collect revenue in the manner provided by this title, a complete delinquent list of all persons then owing taxes to such city and independent school district.

1901, 6th Ses. p. 272, Sec. 105.

Section 1406. What List Must Contain: In the list so delivered must be set down in alphabetical order all matters and things contained in the assessment book and relating to delinquent persons or property.

1901, 6th Ses. p. 272, Sec. 106.

Section 1407. Auditor's Duty Respecting Delinquent Lists: The auditor must carefully compare the list with the assess-

ment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the tax collector who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him the treasurer's receipt for any existing deficiency.

1901, 6th Ses. p. 272, Sec. 107.

Section 1408. Tax Collector Charged with Delinquent List: After settlement with the tax collector, as prescribed in the preceding sections, the auditor must charge the tax collector with the amount of taxes, due on the delinquent tax list, with the ten per cent. added thereto, and deliver the list duly certified to such tax collector.

1901, 6th Ses. p. 272, Sec. 108.

Section 1409. Auditor's Statement to State Auditor: Within ten days after the final settlement, the auditor must transmit, by mail or express, a statement to the state auditor, in such form as he requires, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

1887, R. S. Sec. 1529.

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Section 1410. Publication of Delinquent List: On or before the fourth Monday in May, the tax collector must publish the delinquent list which must contain the names of the persons, and a description of the property delinquent, and the amount of taxes and penalties and costs due opposite each name and description, with the taxes due on personal property added to taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person for the purpose of making which publication the board of county commissioners may allow the publisher not exceeding the sum of twenty-five cents for each description of property advertised.

1901, 6th Ses. p. 272, Sec. 109.

PUBLICATION MUST CONTAIN WHAT: California has held that a provision identical with this one does not require the giving of the "sum" of

the real and personal property taxes: the word "added" being used in the sense of the word "subjoined."—*Cal. Loan & Trust Co. v. Weis*, 118 Cal. 489, 50 Pac. 697.

Section 1411. Notice Accompanying Delinquent List: The tax collector must append and publish with the delinquent list a notice that unless the taxes delinquent, together with the costs and penalties are paid, the real property upon which such taxes are a lien will be sold at public auction.

1901, 6th Ses. p. 273, Sec. 110.

INVALID SALES: No law of the territory can authorize a sale of the lands of the United States for taxes. Such a sale would be void.—*People v. Owyhee Mining Company*, 1 Idaho, 409. When money or property in litigation is in the hands of a receiver of the court, and is assessed to such receiver the taxes thereon must be paid by such

receiver under the direction of the court, and such property is not subject to seizure and sale for the collection of the taxes thereon.—*Palmer v. Pettingill* (Idaho), 55 Pac. 653. The right to sell lands for taxes ceases when tender of payment has been accepted by the officers authorized to collect it, and it is immaterial by whom the payment was made.—*Nickum v. Danvers*,

28 Ore. 322, 42 Pac. 130. So, injunction will lie to restrain the sale of property for taxes where the assessment was fraudulently made, and where the legal tax has been tendered.—*Pacific Postal Telegraph Co. v. Dalton*, 119 Cal. 604, 51 Pac. 1072.

NOTICE: When it is shown that the notice of a sale for taxes was not given in substantial conformity with the statute, the sale will be judged invalid, notwithstanding a tax deed in proper form may have been duly executed and recorded.—*Morris v. St. Louis National Bank*, 17 Colo. 231, 29 Pac. 802. Likewise, where the notice does not state that the property will

be sold "at public auction," as required by statute, such sale renders the tax sale voidable at the instance of the original owner at any time within five years after the tax deed has been executed and recorded.—*Hafey v. Bronson*, 33 Kan. 598, 7 Pac. 239; *Hoffman v. Groll*, 35 Kan. 652, 12 Pac. 34.

Where notice of the sale was properly given and proof thereof made, and the notice was properly filed as required by law, but such notice and proof were afterwards lost, such loss does not render the tax sale void.—*Davis v. Harrington*, 35 Kan. 196, 10 Pac. 532.

Section 1412. Publication, how made, Time of: The publication must be made in a newspaper, or supplement thereto, once a week for three consecutive weeks, published in the county; if it cannot be so published, then by posting in not less than three public places in the county, one of which shall be at the court house door.

1901, 6th Ses. p. 273, Sec. 111.

PUBLISHING LIST A COUNTY CHARGE: The assessor and collector of a county has no right to fix by contract the compensation of the publisher for printing the delinquent tax list.—*Jolly v. Latah County (Idaho)*, 48 Pac. 1063. Similarly, this and the two preceding sections do not give the as-

essor and tax collector authority to audit and allow the claim or charge for publishing the delinquent tax list. Such claim is a county charge and must be presented to the board of county commissioners for allowance.—*Jolly et al. v. Woodworth, Auditor (Idaho)*, 42 Pac. 512.

Section 1413. Publication to Designate Time and Place of Sale: The publication must designate the time and place of sale.

1901, 6th Ses. p. 273, Sec. 112.

SUFFICIENCY OF NOTICE: A delinquent tax list headed "Office of the County Treasurer," dated "July 10, 1878," and reciting that "so much of the following lands as may be necessary, will, on the third day of September and next succeeding days, be sold," etc., "at my office, for the taxes of the year 1877," is not misleading as to time and place.—*Ireland v. George*, 41 Kan. 751, 21 Pac. 776. The notice named the

door of the court house, instead of the treasurer's office, as the place of sale; at the time of the sale, the treasurer's office was being repaired and the treasurer—(the treasurer conducts the sale in Kansas)—was temporarily in another building and made the sale there. The sale was held void.—*Richards v. Cole*, 31 Kan. 205, 1 Pac. 647. The time and place stated in the publication are the proper time and place of the sale.—*Tully v. Bauer*, 52 Cal. 487.

Section 1414. Time and Place of Sale: The time of sale must not be less than forty-two nor more than fifty days from the first publication; and the place must be in front of the county court house.

1901, 6th Ses. p. 273, Sec. 113.

See note to preceding section.

Section 1415. Proof of Publication: The collector, as soon as he has made the publication required, must file with the county auditor a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper or supplement thereof, stating its name and place of publication, and the date of each appearance; and in case

there was no newspaper published in the county, that notices were put up in three public places in the county designating the places therein, which affidavit is prima facie evidence of all the facts stated therein. Thereupon the auditor shall charge the assessor twenty-five cents for each description of property contained therein.

1901, 6th Ses. p. 273, Sec. 114.

AFFIDAVIT OF PUBLICATION: The statutory form of affidavit for proving publication of the notice need not be literally followed, yet, if the substantial requisites of such affidavit be disregarded, the proof of the notice cannot be held sufficient.—*Morris v. St. Louis National Bank*, 17 Colo. 231, 29 Pac. 802.

Section 1416. Twenty-Five Cents Additional on Each Lot: The collector must collect in addition to the taxes due on the delinquent list and the penalty added thereto by law twenty-five cents on each lot, piece or tract of land separately described and assessed, and on the assessment of personal property which must be paid into the county treasury.

1901, 6th Ses. p. 273, Sec. 115.

Section 1417. Sale of Property: On the day fixed for the sale, or some subsequent day to which he may have postponed it, of which he must give notice as in the next section provided the collector, between the hours of ten o'clock, A. M. and three o'clock P. M. must commence the sale of the property advertised, commencing at the head of the list, and continuing alphabetically or in the numerical order of lots and blocks until completed.

1901, 6th Ses. p. 273, Sec. 116.

IMPROVEMENTS: If the improvements, only, on land be assessed and taxed, a sale of the land for such tax is void.—*Quivey v. Lawrence*, 1 Idaho, 313.

Section 1418. May Postpone Sale, How: If the day of commencing the sale be postponed it must be by public announcement on the day and at the time and place fixed for the sale in the original or any amended published notice thereof, and he may adjourn the sale from day to day by public announcement of such adjournment made at the time and place for such adjourned sale; but the sale must be completed within two weeks from the day first fixed.

1901, 6th Ses. p. 274, Sec. 117.

Section 1419. Real Estate, How Sold. When County a Purchaser: The owner or person in possession of any real estate offered for sale for taxes due thereon may designate, in writing, to the tax collector, prior to the sale, what portion of the property embraced in each separate description he wishes sold, if less than the whole; but if the owner or possessor does not, then the collector may designate it and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the taxes, penalties and costs due, including fifty cents to the collector for the duplicate certificate of sale, is the purchaser. But in case, there is no purchaser in good faith for a portion not less than the whole of the property embraced in any one separate description the assessor may sell the whole thereof, and

if there is then no purchaser on the first day that the property is offered for sale, then when the property is offered thereafter for sale, and there is no purchaser in good faith of the same, the whole amount of the property assessed in any or separate description shall be struck off to the county or the purchaser and the duplicate certificate delivered to the county treasurer and filed by him in his office. No charge shall be made for the duplicate certificate when the county is a purchaser; and in such case the tax collector shall make an entry "sold to the county," on the delinquent list opposite the tax, and he shall be credited with the amount thereof in his settlement; *Provided*, The original certificates have been filed with the auditor.

1901, 6th Ses. p. 274, Sec. 118.

SALE, HOW CONDUCTED: Under a similar provision, where the owner failed to designate and the collector made the inquiry, "Who will take the lowest quantity of said block and pay the taxes and costs due?" held not to be in compliance with the statute requiring the collector to "designate" what portion of the whole he would sell. The statute is mandatory and the collector is bound to designate some portion of the tract and offer it for sale first. *Baker J.*, dissenting.—*Jacobs v. Buckalew* (Ariz.), 42 Pac. 619. Under the statute requiring lands at a tax sale to be sold "for the smallest quantity that the purchaser would take and the judgment and all costs," a sale to the highest bidder is simply void.—*Reynolds v. Lincoln*, 71 Cal. 183, 12 Pac. 449. A tax sale for a greater sum than is lawfully chargeable is void.—*Boston Tunnel Co. v. McKenzie*, 67 Cal. 485, 8 Pac. 22. On the other hand, it is held that a tax sale made for one cent less than the taxes, penalties and costs allowed by law, will not be set aside, where otherwise regular.—*Ireland v. George*, 41 Kan. 751, 21 Pac. 776.

The provision that "the collector may designate" what portion of land on which the taxes are not paid shall be sold, leaves it in the discretion of the collector to sell either a part or the whole.—*Doland v. Mooney*, 79 Cal. 137, 21 Pac. 436; *Hewes v. McLellan*, 80 Cal. 393, 22 Pac. 287; but a tax sale will not be declared void simply because it is

one-half of a quarter section, the other half belonging to the same person.—*Spalding v. Watson*, 35 Kan. 39, 10 Pac. 105. On the other hand, it is held that a sale of separate lots together, for the gross amount of taxes thereon, is invalid.—*Casey v. Wright*, 14 Mont. 315, 36 Pac. 191.

WHO MAY PURCHASE: It is a universal principle that one who ought to pay the taxes on property cannot, by omitting to do so, purchase at a sale of the property for the non-payment, and thereby strengthen his title. A purchase by one whose duty it was to pay the taxes operates as a payment only and he cannot derive any benefit as against a third party by the neglect of the duty he owed to such party.—*Kelsey v. Abbott*, 13 Cal. 609. This rule applies as between co-tenants.—*Christy v. Fisher*, 58 Cal. 256; also as between tenant for life and remainderman or reversioner.—*Phelan v. Boylan*, 25 Wis. 679; as between principal and agent.—*Kelsey v. Abbott*, *supra*. One in possession of lands under a contract for their purchase, cannot buy as against his vendor.—*Haskell v. Putnam*, 42 Me. 244; nor one placed in a position of trust with reference to the subject-matter of the tax sale.—*Williams vs. Townsend*, 31 N. Y. 411. Purchase by the officer conducting the sale vests no title in him.—*Ellis v. Peck*, 45 Iowa, 112; but the auctioneer's clerk is not such an officer.—*Wells v. Company*, 47 N. H. 235.

Section 1420. Certificate of Sale, Redemption: Each tax sale, and the certificate therefor, shall be for such portion less than the whole amount of property embraced in any one separate description as the purchaser may agree to purchase; but in no case shall any sale be made or tax certificate issued for more property than is embraced in any one separate description of real estate and such personal property as may be assessed to the owner thereof, unless in the judgment of the assessor a greater number of pieces of real estate are necessary to be included to secure the lien of the tax for personal property thereon. In which case the several pieces of real estate selected by the as-

essor to be sold with the personal property thereon. In which case the several pieces of real estate selected by the assessor to be sold with the personal property shall be included in the sale and tax certificate; every tax certificate so issued can be redeemed only by the payment of the whole amount of tax, penalty, cost and interest due upon all the property included therein.

1901, 6th Ses. p. 274, Sec. 119.

Section 1421. Assessment of Property Sold to County, Redemption: In case property is sold to the county as purchaser it shall be subsequently assessed, each year, but not sold for taxes, unless the county has disposed of its interests, but no person shall be permitted to redeem from such sale except upon payment of the amount due upon such tax certificate, and also of the amount of all subsequent assessments, penalties, costs and fees, and interest on each amount at the rate of eighteen per cent. per annum from the date of tax sales in the respective years such assessment becomes delinquent.

1901, 6th Ses. p. 275, Sec. 120.

Section 1422. Disposition of Proceeds of Property Sold to County: Whenever the assessor makes and delivers to the county his tax deed for any property sold to the county for delinquent taxes, the cities, towns, villages and independent school districts in such county, authorized by law to collect taxes as provided by this title, shall receive of the proceeds of any sale thereof its proportionate interest therein from the county, to be paid (as provided upon redemption of tax certificates for property sold for taxes).

1901, 6th Ses. p. 290, Sec. 184.

Section 1423. Failure of Purchaser to Pay, Resale: If the purchaser does not pay the taxes and costs before ten o'clock A. M., of the following day, the property on the next sale day, before the regular sale, must be resold for the taxes and costs.

1901, 6th Ses. p. 275, Sec. 121.

Section 1424. Purchaser Refusing to Pay, Cannot Bid Again: The bid of any person refusing to make the payment for property purchased by him must not after such refusal be received on the sale of any property advertised in the delinquent list of that year.

1901, 6th Ses. p. 275, Sec. 122.

Section 1425. Tax Certificate of Sale: After receiving the amount of taxes and costs, the collector must make out in duplicate a certificate, dated on the day of the sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount of state and county tax, poll taxes, costs and penalties; also giving the amount of all taxes, penalties and costs of every city, town, village and independent school district in his county, that is authorized by law to collect revenue in the manner provided by this title, and of each

thereof, and the year of the assessment and specifying the time when the purchaser will be entitled to a deed.

1901, 6th Ses. p. 275, Sec. 123.

CERTIFICATE OF SALE: The fact that the date recited in the tax deed specified as the time, in the certificate, when the purchaser would be entitled to a deed, came on Sunday did not affect the validity of such deed, as such date merely indicates the time when the purchaser's right to a deed would become fixed.—*Rollins v. Woodman*, 117 Cal. 516, 49 Pac. 455.

A sale of land for taxes is void where the deed calls for only eighty acres, the amount of property sold, the certificate of sale calling for 120 acres.—*Olsen v. Bagley*, 10 Utah, 492, 37 Pac. 739.

A certificate of tax sale is not evidence of any matters not therein stated or of the performance of any steps prior to the sale.—*Hall v. Thiesen*, 61 Cal. 524.

A purchaser at a tax sale, holding only a sale certificate, and before the execution of a tax deed, has no such title or right to the land as will protect him in committing waste.—*Douglas v. Dickson*, 31 Kan. 310, 1 Pac. 541. The assignee of a tax sale certificate takes it subject to whatever imperfections and disabilities existed against it in the hands of his assignor.—*Prizer v. Taylor*, 3 Kan. App. 690, 44 Pac. 902.

Section 1426. Certificate Signed by Whom, Delivery:

The certificate must be signed by the collector and one copy delivered to the purchaser, and the other filed in the office of the county auditor.

1901, 6th Ses. p. 275, Sec. 124.

Section 1427. Record of Certificates to be Kept by Collector:

The collector before delivering any certificate, must in a book enter the name of the party assessed, a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name and amount of tax, penalty and cost on account of state and county tax and the taxes of each of the cities, towns, villages and independent school districts in such county, authorized by law to collect revenue as provided in this title, stated separately, and the total amount paid; and regularly number the descriptions on the margin of the book and put a corresponding number on each certificate, such book must contain blank spaces following each entry of a tax certificate therein, in which may be entered the name of the redemptioner, and the time when paid; the amount paid for such redemption and to whom sold. He shall keep the entries of certificates sold to individuals and to the county for any year separately and shall arrange them in alphabetical order of the names of the persons assessed. He shall at the same time make, in like books, an exact copy of his said tax certificate book and furnish one each of such copies to the county auditor and the county treasurer at the time of delivering the original and duplicate tax certificates to said officers as required by law; at which time it shall be the duty of the county auditor to compare the duplicate tax certificates of property sold to individuals and the original tax certificates of property sold to the county, with his copy of said certificate book and to certify therein that the same is correct. It shall be the duty of the county treasurer to make a like comparison of the duplicate tax certificates of property sold to the county at the time the same are filed with him by the assessor and to certify that the same is correct or to such certificates; and such

book and duplicate and original tax certificates so delivered to and filed with the ex-officio auditor and recorder of the county shall for all purposes for which necessary in connection with the lien upon or title to any real estate, be considered filed with and a part of the records of such officer as ex-officio recorder.

1901, 6th Ses. p. 276, Sec. 125.

Section 1428. Lien of State Vests in Purchaser:

On filing the certificates with the ex-officio auditor and recorder the lien vests in the purchaser and is only divested by the payment to the county treasurer on certificate of the auditor for the use of the purchaser the whole amount of money paid for such certificate, together with interest thereon at the rate of eighteen per cent. per annum until paid, which said per cent of interest shall be construed in the nature of penalty. At the time of filing such certificate the assessor must certify to the governing authority of cities, towns, villages and independent school districts authorized by law to collect revenues as in this title provided, a complete list of property sold in such city, town, village and independent school district for delinquent taxes.

1901, 6th Ses. p. 276, Sec. 126.

Section 1429. Time of Redemption: A redemption of the property sold may be made by the owner or any party in interest within three years from the date of the purchase.

1901, 6th Ses. p. 277, Sec. 127.

REDEMPTION GENERALLY: A tax deed executed and delivered before the full expiration of the entire redemption period is void.—*Brinker v. Union Pac. D. & G. Ry. Co.* 11 Colo. App. 166 55 Pac. 207. The right of redemption is statutory and is subject to all the limitations which the statute imposes.—*Quinn v. Kenney*, 47 Cal. 147. The owner of an undivided interest must redeem the whole tract.—*Mayo v. Marshall*, 23 Cal. 595. Redemption by a tenant in common inures to the benefit of his co-tenant.—*Jones v. Board of Com'rs of Miami County*, 30 Kan. 278, 1 Pac. 76.

The statutory time of redemption begins to run from the payment of the money to the collector.—*Maina v. Elliott*, 51 Cal. 8. During the time of redemption, the purchaser is not entitled to the rents and profits.—*Mayo v. Woods*, 31 Cal. 269. The Kansas statute provides that lands sold for taxes may be redeemed within three years from the day of sale; held, that in computing the time, the day on which the sale took place is to be excluded.—*Richards v. Thompson*, 43 Kan. 209, 23 Pac. 106; and where the last day falls on Sunday, the owner has the following day on which to redeem.—*English v. Williamson*, 34 Kan. 212, 8 Pac. 214. Computing time: See note to Sec. 12.

Section 1430. Redemption in Lawful Money; To Whom Paid:

Redemption must be made in lawful money of the United States; and when made for the auditor and treasurer the redemptioner shall, upon the auditor's certificate pay to the treasurer the amount necessary to redeem the same which shall be charged by the county auditor and credited by the county treasurer to a fund to be known as "Tax Redemption Fund" and upon the payment of such amount to the county treasurer he shall immediately enter in his tax certificate book the name of the redemptioner and the time when redeemed and the amount paid and upon the return of the treasurer's receipt to the auditor and assessor for such amount the auditor and assessor shall each make a like entry in his tax certificate book, and the auditor shall indorse on the duplicate certificate in his

office the fact of such redemption for which he shall collect for the county a fee of one dollar. Whenever after any such redemption the person to whom the original tax certificate was issued, or any lawful owner thereof, shall present to the auditor such original certificate marked redeemed and signed by him together with legal evidence of his lawful ownership thereof, if other than the person to whom issued, the auditor shall issue to him an order on the county treasurer for the amount theretofore paid on account of such redemption; crediting the "Tax Redemption Fund" on account of such order; and upon presentation of such auditor's order the county treasurer shall pay the same charging said "Tax Redemption Fund" therefor and returning such order as his voucher for such payment at the time of making his regular reports to the county auditor as provided by law.

1901, 6th Ses. p. 277, Sec. 128.

Section 1431. Auditor and Treasurer to Report Tax Redemption Fund, Proceedings on Redemption, Fees

Such tax redemption fund shall be reported in all reports of the auditor and treasurer, but the fund therein from time to time shall be considered as deposit funds and shall not be included in such reports or balances therein as public money. In all cases where the redemption of any tax certificate is made by payment to the person to whom the original tax certificate was issued or to the lawful owner thereof, such person, or the lawful owner thereof must personally direct the auditor and assessor each to make the necessary entries in their respective tax certificate books and the auditor to mark the duplicate thereof redeemed, and must pay the auditor for the use of the county a fee of one dollar therefor; and at the same time surrender the original tax certificate marked redeemed and signed by him: *Provided*, That upon legal documentary evidence of the ownership of such tax certificates being furnished and upon the signature of the owner duly acknowledged as required by law to transfer title to real estate, together with the surrender of the tax certificate in like manner and the payment of like fee the auditor and assessor shall each proceed relative to such redemption as provided when such person or the lawful owner thereof is personally present.

If the property is not redeemed within three years from the date of sale, the assessor or ex-officio tax collector, or his successor in office must make to the purchaser or the other person lawfully entitled thereto, upon demand by him a deed to the property, reciting in the deed substantially the matters contained in the certificate and that no person redeemed the property during the time allowed by law for its redemption. The assessor as ex-officio tax collector is entitled to receive for the county from the purchaser two dollars for making such deed.

1901, 6th Ses. p. 278, Sec. 129.

Section 1432. Redemption From the County: In all cases where the county has become the purchaser of property of any tax sale and the tax certificates have been issued to the county therefor and duly entered in the certificate books of the county auditor and treasurer, redemption thereof may be made by any person in interest,

in the same manner and upon like terms as is herein provided for the redemption of such tax certificates to the auditor and county treasurer when sold to individuals; *Provided, however,* That in ever such redemption of property sold to the county, the county auditor in his certificate to the treasurer shall apportion the total amount paid for taxes, penalties, costs and interest to the several funds provided for in such levy except state ad valorem, in the amount levied for each together with interest at the rate of seven per cent. per annum on the amount apportioned to each fund and the balance thereof, to the current expense fund of the year of such redemption. And the amount of all taxes, penalties and costs other than state and county, and interest thereon to each of the several cities, towns, villages and independent school districts authorized by law to collect revenue as provided herein, in such county according to their several interests, and the county treasurer shall credit to each of such cities, towns, villages and independent school districts such amounts apportioned thereto and pay out of such funds all warrants drawn thereon. The county auditor is authorized to draw his warrant upon such funds whenever there is any amount to the credit of such cities, towns, villages, and independent school districts without an order of the board of county commissioners and such warrants shall be payable to the treasurer of such cities, towns, villages and independent school districts for the taxes, costs and penalties for which any property included in such certificate was sold according to their several interests together with the interest thereon that may be due, and deliver the same; charging the treasurer therewith in such several funds.

1901, 6th Ses. p. 278, Sec. 130.

Section 1433. Tax Certificates Held by County May be Sold: All tax sale certificates held by the county, shall be on sale by the auditor at all times during office hours, for an amount equal to the face thereof with accrued interest. Whenever any person shall desire to purchase the same he shall pay to the treasurer upon the certificate of the auditor the total amount expressed in each tax certificate as tax, penalty and cost, together with interest thereon from date of issue to date of purchase at the rate of eighteen per cent. per annum; and thereupon the treasurer shall enter in the proper column of the tax certificate book the name of the person to whom sold and deliver to him the duplicate tax certificate therefor. Upon the return of the treasurer's receipt for the payment of such purchase money, one each to the assessor and auditor, and the production of the duplicate tax certificate to the auditor, the auditor shall indorse on such duplicate tax certificate "sold to (naming him) this.....day of.....19.." and shall sign the same as auditor; and thereupon shall file the same with the duplicate tax certificates sold to individuals; indorsing in a like manner the original tax certificate affixing his seal thereto and delivering it to the purchaser. The treasurer and auditor shall each enter on his tax certificate book the name of such purchaser opposite each such certificate purchased.

1901, 6th Ses. p. 279, Sec. 131.

Section 1434. Auditor to Apportion Amount Received, Rights of Purchaser: The auditor shall apportion the amount received from the sale of any or all such tax certificates, as moneys for the redemption thereof are herein required to be apportioned.

After any such sale of tax certificates held by the county for delinquent taxes, the purchaser shall be considered an individual purchaser thereof and entitled to all the provisions of law relating to such purchasers as if he had purchased at such tax sale; and all certificates so sold may be redeemed in like manner as provided for the redemption of tax certificates sold to individuals.

1901, 6th Ses. p. 280, Sec. 132.

Section 1435. Name of Purchaser to be Entered, Notice of Redemption: Upon proper notice to the auditor any lawful owner, other than the person to whom originally sold, may have his name entered in the tax certificate book as the owner of any certificate owned by him and the auditor must notify him, and all original purchasers who have not disposed of their interests, of the redemption of any tax certificate so entered as owned by him.

1901, 6th Ses. p. 280, Sec. 133.

Section 1436. Tax Deed Prima Facie Evidence of What: The matters recited in the certificate of sale must be recited in the deed, and such deed, duly acknowledged or proved, is prima facie evidence that:

1. The property was assessed as required by law;
2. The property was equalized as required by law;
3. The taxes were levied in accordance with law;
4. The taxes were not paid;
5. At a proper time and place the property was sold as prescribed by law, and by the proper officer;
6. The property was not redeemed;
7. The person who executed the deed was the proper officer;
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

1901, 6th Ses. p. 280, Sec. 134.

DEEDS, RECITALS IN, EVIDENCE: Under this provision, a tax deed regular on its face is prima facie evidence of the existence and regularity of all the facts and acts set forth in the eight subdivisions of said section; and to defeat such deed the adverse party must show the non-existence of such facts, or some of them.—Co-operative Savings & Loan Ass'n v. Green et al. (Mackintosh, Intervene) (Idaho), 51 Pac. 770. The assessment of land is a prerequisite which cannot be dispensed with. It is the basis upon which all subsequent proceedings rest. For the purpose of defeating a tax deed, evidence may be given that the land was not assessed, or that it is public land.—Quivey v. Lawrence, 1 Idaho, 313. This section

modifies the stringent common law rule and makes tax deeds prima facie evidence of the regularity of the preliminary proceedings as well as of the sale itself.—Pierce v. Low, 51 Cal. 580. The fact that a tax deed is made evidence of compliance does not dispense with compliance; it merely shifts the burden of proof upon the party denying the regularity of the proceedings.—Kelsey v. Abbott, 13 Cal. 609. The statutes do not command that the mode of offering the land for sale shall be recited in the deed and a recital of the publication notice not being among the recitals expressly required, it will be presumed; for the deed is, by this section, prima facie evidence that "the property was sold as prescribed by law."—Hayes v. Ducasse, 119 Cal. 682, 52 Pac. 121. The effect of a tax deed

as evidence is to be governed by the law in operation at the time of the sale.—*Keane v. Cannovan*, 21 Cal. 291. A tax deed reciting that the land therein described was assessed to "Henry Loose and to all owners and

claimants, known and unknown," is void on its face, and it cannot be shown that there was in fact a valid assessment.—*Z. Russ & Sons Co. v. Crichton*, 117 Cal. 695, 49 Pac. 1043; but see Sec. 1455.

Section 1437. Deed Conclusive Evidence of What:

Such deed duly acknowledged or proved, is prima facie evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, up to the execution of the deed.

1901, 6th Ses. p. 281, Sec. 135.

Section 1438. What Deed Conveys: The deed conveys to the grantee the absolute title to the lands described therein, free of all incumbrances, except any lien for taxes which may have attached subsequently to the assessment.

1901, 6th Ses. p. 281, Sec. 136.

TAX TITLE: A claim of title based solely on a tax deed, including as part of its consideration an illegal penalty,

and special taxes levied under an unconstitutional act, is insufficient in an action to quiet title.—*Sheaff v. Husted* (Kan. App.), 55 Pac. 507.

Section 1439. Assessment Book Prima Facie Evidence of What: The assessment book, or delinquent list or a copy thereof certified by the county auditor showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of law in relation to the assessment and levy of such taxes have been complied with.

1901, 6th Ses. p. 281, Sec. 137.

Section 1440. Sale Where Portion of Tax is Invalid:

Whenever property is advertised for sale for the non-payment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale shall not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, shall, not less than six days before the time at which the property is advertised to be sold, deliver to the tax collector a protest in writing, signed by the owner or his agent, specifying the portion of the tax which he claims to be invalid, and the grounds upon which such claim is based.

1901, 6th Ses. p. 281, Sec. 138.

RECOVERY OF ILLEGAL TAXES PAID: To enable one to recover back a tax illegally assessed, and paid under protest, it must appear that the tax was delinquent, and that the officer to whom it was paid was armed with authority, real or apparent, to seize the property and threatened to do so.—*Bank of Santa Rosa v. Chalfant*, 52 Cal. 170. If the whole tax is paid un-

der protest by the person taxed, he can recover back that portion of the tax which was illegal.—*Bank of Mendocino v. Chalfant*, 51 Cal. 369. The notice of protest ought to specify such causes of illegality in the tax as the party considers vitiates it.—*Meek v. McClure*, 49 Cal. 623. The protest is not sufficient unless it specifies such illegal item among the grounds of illegality of the tax.—*De Fremery v. Austin*, 53 Cal. 380.

SALE OF PERSONAL PROPERTY.

Section 1441. Sale of Personal Property for Taxes:

The tax collector may, at any time after it is assessed, collect the taxes

due on personal property except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent.

1901, 6th Ses. p. 281, Sec. 139.

SEIZURE AND SALE: Personal property in the hands of a receiver is not subject to seizure and sale for the collection of the taxes thereon.—*Palmer v. Pettingill et al.* (Idaho), 55 Pac. 653. A similar provision to this one is held to make it imperative on the assessor to collect the personal property

taxes, if there is no real estate on which they are a lien.—*People v. Smith*, 123 Cal. 70, 55, Pac. 765. Personal property liable to distraint for taxes, is not relieved from liability by transfer of title and possession after the lien for taxes has attached.—*Mills v. County of Thurston*, 16 Wash. 378, 47 Pac. 759.

Section 1442. Sale of Personalty, How Made: The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentage, and costs.

1901, 6th Ses. p. 281, Sec. 140.

Section 1443. Notice of Sale of Personalty: The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

1901, 6th Ses. p. 281, Sec. 141.

1887 R. S. Sec. 1562.

Section 1444. Tax Collector May Charge Mileage: For seizing and selling personal property, the tax collector may charge in each case for each mile necessarily traveled in going only, twenty-five cents.

1901, 6th Ses. p. 281, Sec. 142.

Section 1445. Payment and Delivery Vests Title: On payment of the price bid for any property sold, the delivery thereof with a bill of sale, vests the title thereto in the purchaser.

1901, 6th Ses. p. 281, Sec. 143.

Section 1446. Excess Returned to Owner: All excess over the taxes, per cent. and costs, of the proceeds of any such sale, must be returned to the owner of the property sold, and until claimed must be deposited in the county treasury subject to the order of the owner, heirs or assigns.

1901, 6th Ses. p. 282, Sec. 144.

Section 1447: Unsold Portion Left at Place of Sale: The unsold portion of any property may be left at the place of sale at the risk of the owner.

1901, 6th Ses. p. 282, Sec. 145.

Section 1448. Auditor to Note Payments by Delinquents: The tax collector must annually, within fifteen days after the tax sale of any year has been completed, attend at the office of the auditor with the delinquent tax list, and all certificates of tax sales required by law to be filed by him with the auditor, and the auditor must then carefully compare the lists with the assessments of persons and property not marked as "paid" on the assessment and subsequent assessment book, and when taxes have been paid, must note the fact in the appropriate column in the assessment book and also

note that all descriptions of property which has been sold at tax sale are represented by proper tax certificates as provided by law.

1901, 6th Ses. p. 282, Sec. 146, first part.

Section 1449. Oath of Tax Collector as to Payments: The auditor must then administer to the tax collector an oath to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid, has been credited in the list with such payment.

1901, 6th Ses. p. 282, Sec. 146, last part.

Section 1450. Final Settlement with Tax Collector: The auditor must foot up the amount of taxes, penalties and costs which have been paid to the assessor upon such delinquent roll, the amount of all taxes therein which have been sold to the county, and the penalties thereon. And (after charging the assessor in his proper account with all penalties and costs due on account of such taxes on said roll) he shall credit the tax collector therewith, having a final settlement with him, and the delinquent roll must thereafter remain on file in the auditor's office.

All taxes due on property subsequently assessed after sale to the county for any year, and remaining unpaid, must be credited to the tax collector with the penalty thereof.

1901, 6th Ses. p. 282, Sec. 147.

Section 1451. Property Sold to County, Taxes Subsequently Assessed to be Entered in Red Ink: All taxes and penalties which have accrued upon property subsequently assessed after sale to the county, shall, as long as the county retains the tax certificate therefor and until the date when the county is entitled to a tax deed for such property, be entered by the assessor in red ink, with the amount for each year, under the current assessment for property each year, but such amounts shall not be extended into the footing of such assessment roll. At the expiration of the time in which the county is entitled to a deed for any such property the assessor shall immediately execute a deed therefor and file the same with the recorder for record. When the taxes due on any property so subsequently assessed are paid the auditor shall cancel such tax opposite the original assessment for each year, showing the amount of tax and penalty paid thereon, with date paid.

1901, 6th Ses. p. 282, Sec. 148.

Section 1452. Affidavit of Tax Collector as to Unpaid Taxes: At the same time the collector must make an affidavit, indorsed on the list, that the taxes not marked as "paid" have not been paid, and that he has not been able to discover any property belonging to, or in possession of, the persons liable to pay the same whereof to collect them.

1887 R. S. Sec. 1570.

Section 1453. Cancelling Unpaid Taxes: All taxes included in the delinquent roll, charged on account of double assess-

ments, property erroneously assessed, or which, by reason of any bona fide error of the assessor, or which for any lawful reason should not be collected, and which has not been theretofore deducted, shall be reported to the board of county commissioners at their first regular meeting after the settlement of the tax collector with the auditor, and if the said board is satisfied that the same should not be collected, they shall order the auditor to cancel the same upon said roll; and thereupon the auditor, after cancelling each of such items on said delinquent roll, shall credit the assessor with the amount of all such cancellations in his property tax account with the county.

1901, 6th Ses. p. 283, Sec. 149.

Section 1454. Taxes not Cancelled Entered for Succeeding Year: All taxes not cancelled must be entered by the auditor on the assessment book of each succeeding year until paid or cancelled.

1887 R. S. Sec. 1572.

Section 1455. Misnomer of Owner Does not Affect Sale: When land is sold for taxes correctly as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

1901, 6th Ses. p. 284, Sec. 152.

Section 1456. Prosecuting Attorney to Sue for Personal Taxes: When the owner of any assessed personal property, the taxes upon which are not a lien upon real property, has removed, concealed or disposed of, or threatens or is about to remove, conceal or dispose of such property, or any part thereof, before the taxes levied thereon have been paid, or do, or suffer or cause to be done any act to prevent the seizure thereof by the tax collector, or when from any cause beyond his control, but not a failure to collect at the time when assessed, the tax collector is unable to collect the taxes upon any assessed personal property, the county attorney must, upon written notice from the tax collector, commence in the name of the county a personal action against such owner in the county where the assessment was made, for taxes and the percentage, interest, and costs, and in any action the provisional remedies of arrest and bail and of attachment may be issued against such owner and his property.

1901, 6th Ses. p. 284, Sec. 153.

Attachment: Code Civil Proc. Sec.

Arrest and bail: Code Civil Proc. 3294 et seq.
Sec. 3244 et seq.

Section 1457. Proof Necessary to Entitle to Judgment: On the trial a certified copy of the assessment, signed by the auditor of the county where the same was made, with the affidavit of the collector thereto attached, that the taxes have not been paid, describing it as on the assessment book or delinquent list, is prima facie evidence that such tax and the percentum is due, and entitles him to judgment, unless the defendant proves the tax is paid.

1901, 6th Ses. p. 285, Sec. 154.

SUIT TO COLLECT TAXES: It is within the power of the legislature to define by law the grounds upon which

a party sued for his taxes may set up a defense.—*People v. Wilkerson et al.* 1 Idaho, 619. In a suit for taxes, although the defendant recovers, the

judgment should be general, without costs.—*People v. Moore*, 1 Idaho, 662. The assessment roll is prima facie evidence of the plaintiff's right to recover

in an action for the collection of taxes.—*Modoc County v. Churchill*, 75 Cal. 172, 16 Pac. 771.

CHAPTER LVII.

POLL TAXES.

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| 1458. Who liable to pay poll tax. | 1469. Poll tax receipt, to whom delivered. |
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| 1464. Real and personal property liable for poll tax. | 1475. Charging collector with unpaid poll taxes. |
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| 1467. Employer to pay poll tax of employees, when. | 1478. Poll taxes go to current expense fund. |
| 1468. Employer may deduct tax paid from wages. | |

Section 1458. Who Liable to Pay Poll Tax. Amount of Tax. Every male inhabitant of this state over twenty-one and under fifty years of age, except paupers, insane persons. Indians not taxed, government pensioners, active members of volunteer fire companies, regularly enrolled as such, and persons permanently disabled so as not to be able to perform manual labor, and honorably discharged soldiers in the volunteer service of the United States, must annually pay a poll tax of two dollars, if paid on or before the second Monday in January and after that date two dollars and fifty cents.

1901, 6th Ses. 298, Sec. 1.

Section 1459. Charging Tax Collector With Receipts: Upon delivering poll tax receipts to the tax collector as provided in this chapter, the auditor must charge the same to him, and take his receipt therefor. All such receipts delivered to the tax collector before the second Monday of January must be for the sum of two dollars each and he must charge that sum for each, and all such receipts delivered to the tax collector after the second Monday of January in each year must be the sum of two dollars and fifty cents each, and he must be charged that sum for each.

1901, 6th Ses. p. 298, Sec. 2.

other than official is a misdemeanor;

Having in possession a blank receipt Penal Code, Sec. 4791.

Section 1460. Tax Collector to Return Two-Dollar Receipts, When: On the first Tuesday after the first Monday in January the tax collector must return to the auditor all the two dollar poll tax receipts received by him and not used, and make full settlement with the auditor therefor and pay to the treasurer the total amount collected and not before paid in, and file the treasurer's receipt therefor, with the auditor.

1901, 6th Ses. p. 298, Sec. 3.

Section 1461. Poll Tax Receipts; Signatures:

The auditor of each county shall cause a sufficient number of poll tax blank receipts, and delinquent poll tax receipts consecutively numbered from one, in each series, having the year for which issued printed in red skeleton letters, as large as convenient thereon, the delinquent poll tax receipts being plainly distinguished as such; and said auditor must cause a number thereof equal to the probable number of inhabitants in each county liable to pay poll tax, to be immediately forwarded to the county treasurer of each county, who shall sign them, or so many of them as may be required, and make an entry thereof in a book to be kept for that purpose; and thereupon deliver them to the county auditor, who must likewise sign them and make an entry of the number he received in a book, to be kept by him for that purpose.

1901, 6th Ses. p. 298, Sec. 4.

Section 1462. Delivery of Receipts to Tax Collector: The county auditor must from time to time issue to the tax collector so many of the receipts for poll tax as he may need, taking his receipt therefor.

1901, 6th Ses. p. 299, Sec. 5.

Section 1463. No Other Receipts Valid: No receipts for poll tax other than those mentioned in this chapter, must be used or given for the payment of any such tax.

1901, 6th Ses. p. 299, Sec. 6.

Penal Code, Sec. 4790.

Penalty for using other receipt:

Section 1464. Real and Personal Property Liable for Poll Tax: The poll tax is a lien upon the real property assessed to the person liable therefor, and such property shall be sold at tax sale therefor, as other taxes, and at the same time and in connection therewith; but when such person is not assessed for real property the tax collector may collect his poll tax at any time. The tax collector must demand payment of poll tax of every person liable therefor, and on the neglect or refusal of any person who is not assessed for real property, to pay the same, he must collect it by seizure and sale of any personal property owned by such person.

1901, 6th Ses. p. 299, Sec. 7.

Section 1465. Sale of Personal Property, how Made: The sale may be made after three hours' verbal notice of time and place, and the provisions of the revenue law relating to seizure and sale of personal property for taxes thereon are applicable thereto.

1901, 6th Ses. p. 299, Sec. 8.

Section 1466. Tax Collector May Demand Names of Employees: The tax collector may demand of any employer, or from the superintendent or foreman of any mine or reduction works, or any agent of a corporation, the names of all persons in his employ or employed in such mine or works or by any such corporation.

1901, 6th Ses. p. 299, Sec. 9.

Penal Code, Sec. 4792.

Refusal to give name a misdemeanor:

Section 1467. Employer to pay Poll Tax of Employee, When: Every person, company, or corporation indebted to one who neglects or refuses, after demand, to pay a poll tax for which he is liable, becomes liable therefor, and must pay the same after service upon him, or upon any member or agent of such company or agent of such corporation, by the collector, of a notice in writing stating the name of any such delinquent.

1901, 6th Ses. p. 299, Sec. 10.

Section 1468. Employer may Deduct Tax Paid from Wages: Every person, company or corporation paying the poll tax of another may deduct the same from any indebtedness to such person.

1901, 6th Ses. p. 299, Sec. 11.

Section 1469. Poll Tax Receipt, to Whom Delivered: The tax collector must deliver the poll tax receipt, filled out with the name of the person owing the taxes attached to the tax certificate, to the purchaser of property at any sale for delinquent taxes; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

1901, 6th Ses. p. 300, Sec. 12.

Section 1470. Receipt is Only Evidence of Payment: The receipt so delivered is the only evidence of payment.

1901, 6th Ses. p. 300, Sec. 13.

Section 1471. Tax Collector to Settle Monthly: On the first Monday in each month the collector must make an oath, before the auditor of the total amount of poll taxes collected by him during the last preceding month, and must at the same time settle with the auditor for the same, and pay into the county treasurer's office the total amount of poll taxes collected and file the treasurer's receipt therefor with the auditor.

1901, 6th Ses. p. 300, Sec. 14.

Section 1472. Auditor to Return Receipts to Treasurer: The auditor must, as soon as either settlement is made, return to the treasurer the receipts not used.

1901, 6th Ses. p. 300, Sec. 15.

Section 1473. Treasurer to Credit Auditor and Return to State Auditor: The treasurer must credit the auditor with the receipts so returned and thereupon seal them up securely and mark the year, and number of receipts, and class thereon and file the same.

1901, 6th Ses. p. 300, Sec. 16.

Section 1474. Poll Tax Book, when and by whom Made: It is the duty of the assessor of each county during the month of January next succeeding any general election, to copy into a book furnished him by the board of county commissioners of his county, to be known as the "Poll Tax Book," the name of every person on the registrar's "Register of Qualified Electors," subject to a payment of a poll tax.

The names must be alphabetically arranged according to the first letter of the family name, and said book must be kept in his office as a public record. Such officer must from time to time add to the lists in said book, under the proper letter, the names of any residents of his county, or of any persons who may have become residents of said county, or who may attain their majority, who are subject to the payment of a poll tax. And any resident of the county may require such officer to insert in said book, under the proper letter, any omitted name of any resident of said county who is subject to the payment of a poll tax, and for the wilful omission from the proper place in said book of the name of any resident of his county, subject to the payment of a poll tax, such officer forfeits to the school fund of his county the sum of twenty-five dollars for each name so wilfully omitted, to be recovered in an action on his official bond by the county superintendent of public instruction.

1901, 6th Ses. p. 300, Sec. 17.

Section 1475. Charging Collector with Unpaid Poll Taxes: Such officer must, at the regular meeting of the board of county commissioners, on the second Monday in September each year, produce his poll tax book to the board, and he must be charged with one poll tax for every name in said book, and can only be discharged by showing that he has collected the tax of every person named in said book, or that those from whom he has failed to collect such poll tax have died, removed from the county, or become exempt, or that for some other sufficient reason the tax in such case could not be collected; and every poll tax from which he is not thus discharged by the board, he must collect before the day on which he is required herein to return to the auditor all poll tax receipts, or be finally charged therewith; *Provided*, That the delivery of the poll tax receipt of any person whose property has been sold for taxes to the county, attached to the tax certificate therefor, shall be deemed a collection of such poll tax; and the board must cause action to be brought upon the official bond of such officer for the amount of such final charge, together with the amount of any other poll taxes he has wilfully failed to collect; and in any such action, proof that the name of any delinquent is on his poll tax book, and that he was not discharged from the collection of the tax from such delinquent by the commissioners, or that any resident of the county had given him the name of any delinquent as that of any person subject to the payment of such tax, is prima facie evidence of such willful neglect by the officer and can only be rebutted by proof that the tax is paid, or that the alleged delinquent is exempt or not subject to poll tax in the county, or that it could not be collected by the means afforded by law.

1901, 6th Ses. p. 301, Sec. 18.

Section 1476. Tax Collector to Settle for Receipts, When: On the day upon which the assessor is required by law to file the tax certificates for property sold for delinquent taxes and turn over the delinquent tax roll to the auditor he must return to the auditor all of the three dollar and fifty cents poll tax receipts received

by him and not used, and make final settlement therefor, and pay the treasurer all poll tax money not before paid in, and file the treasurer's receipt therefor with the auditor; and thereupon the auditor must return such delinquent poll tax receipts to the treasurer who must credit the auditor with the same and file the same in the manner required for two dollar poll tax receipts.

1901, 6th Ses. p. 301, Sec. 19.

Section 1477. No Name must be Erased from Book:

No name once entered on said poll tax book must be erased therefrom except by the direction of the board of county commissioners, on the ground that the party is not subject to the tax, and any name once placed on a poll tax book must be carried to the new books successively, to be prepared after each general election, unless so directed to be omitted.

1901, 6th Ses. p. 302, Sec. 20.

Section 1478. Poll Taxes go to Current Expense Fund: All money collected as poll tax under the provisions of this chapter, must be paid into the county treasury, and shall be apportioned to the "current expense" fund of the county in which collected.

1901, 6th Ses. p. 302, Sec. 21.

CHAPTER LVIII.

LICENSES.

Section.

- 1479. State auditor to prepare license receipts.
- 1480. Receipts, to whom transmitted; signatures.
- 1481. License receipts for county purposes.
- 1482. Auditor to sign and deliver receipts to tax collector.
- 1483. Record of licenses delivered, sold, etc.
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- 1513. Intoxicating liquors defined.
- 1514. License to sell Liquors not to be drunk on place.

Section 1479. State Auditor to Prepare License Receipts: The state auditor must prepare and have printed blank licenses of all classes mentioned in this chapter for terms of three, six and twelve months, and for such shorter terms as are herein au-

thorized to be issued, with a blank receipt attached for the signature of the tax collector when sold; except such licenses as are mentioned in section 1481.

1887 R. S. Sec. 1630, exception added by Commission.

LICENSE IS NOT A TAX: Licenses held not taxes within the meaning of the Montana state constitution requiring taxes to be uniform.—*State v. French*, 17 Mont. 54, 41 Pac. 1078. And California has held that a license tax on a business, the property used in which is subject to and has paid a

property tax, ad valorem, is not in conflict with the constitutional provision in relation to uniform taxation.—*Ex parte Mirande*, 73 Cal. 365, 14 Pac. 888. A license is neither property nor a contract in any constitutional sense but is subject at all times to the police powers of the state.—*Hevren v. Reed* (Cal.), 58 Pac. 536.

Section 1480. Receipts, to Whom Transmitted; Signatures: The state auditor, after signing, numbering, and classifying the same, must transmit as many as may be required to the treasurer of each county and charge him therewith. The treasurer must countersign the same and deliver them to the county auditor, taking his receipt therefor and charge him therewith, giving in the entry the number, classes and amounts thereof.

1887 R. S. Sec. 1631, compiled from laws of 1875, p. 510, Sec. 81.

Section 1481. License Receipts for County Purposes: The county auditor must furnish printed forms (similar to those furnished by the state auditor) for all licenses, the entire proceeds of which are paid into the county treasury, and each license must be first numbered by the county treasurer, and by said treasurer charged to the county auditor in a book kept for that purpose.

1887 R. S. Sec. 1632; Compiled Laws 1875, p. 501, Sec. 53.

What license issued: Sec. 1493.

Proceeds to county treasury: See Title on Public Ways, Sec. 1283.

Note.—Since the amendment of Section 1640 of the Revised Statutes made at the session of 1895, 3d Ses. p. 37 (see Sec. 1490 of this Code) the above section would seem to be inapplicable to any licenses, except perhaps toll-roads, toll-bridges and toll-ferries. The col-

lection of licenses for roads, bridges and ferries is not provided for under the title relating to revenue, but is found under the title on Public Ways. It is therefore doubtful whether the amendment of Section 1640 of the revenue title affected licenses provided for under the highway title. For the reasons herein stated the Commission has allowed the above section to remain in the Code.

Section 1482. Auditor to Sign and Deliver Receipts to Tax Collector: The county auditor must affix his official seal to, and sign all licenses, and from time to time deliver them to the tax collector in such quantity as may be required; taking his receipt therefor and charge him therewith, giving in the entry numbers, classes, and amounts thereof.

1887 R. S. Sec. 1633; compiled from laws 1875, p. 511.

Having in possession blank receipts

other than official a misdemeanor: Penal Code, Sec. 4791.

Section 1483. Record of Licenses Delivered, Sold Etc.: The auditor must keep in his office the stubs of all licenses by him delivered to the tax collector, and a ledger in which he must keep the collector's account for all licenses delivered to him, sold, or returned unsold by him. A correct statement of the collector's license account must be certified to the county treasurer each month by the auditor.

1887 R. S. Sec. 1634; compiled from laws 1875, p. 511.

Section 1484. Quarterly Statement to State Auditor:

On the first business day of January, April, July and October, respectively, of each year, or within ten days thereafter, each county treasurer must report to the state auditor, the number of licenses issued by the tax collector, or officer charged with the duty of issuing the same, the amount of money paid for the same, and the number and description of licenses on hand, and the state auditor must hold each county treasurer or other county officer responsible for all licenses issued to him under this chapter, not accounted for or returned at the settlement required by this chapter to be made on the first Tuesday after the first Monday of January of each year.

1887 R. S. Sec. 1635; Compiled Laws 1875, p. 513, Sec. 87.

Section 1485. Procuring License. City Licenses:

A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the tax collector of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch, establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person in addition to the license provided by this chapter, also procures the license required by the ordinances or orders of such city or town.

1887 R. S. Sec. 1636.

Failure to deliver receipt a misdemeanor; Penal Code, Sec. 4790.

Carrying on business without license, penalty; Penal Code, Sec. 4802.

Section 1486. Enforcing Payment of License:

Against any person required to take out a license who fails, neglects or refuses to take out such license, or who carries on, or attempts to carry on, business without such license, the collector may direct suit in the name of the state of Idaho as plaintiff, to be brought for the recovery of the license tax, and in such case either the collector or prosecuting attorney may make the necessary affidavit for, and a writ of attachment may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, twenty dollars damages must be included in the judgment and costs to be collected from the defendant, and when collected five dollars thereof must be paid to the collector and fifteen dollars to the prosecuting attorney prosecuting the suit.

1887 R. S. Sec. 1637; Compiled Laws 1875, p. 511, Sec. 84.

Section 1487. Defense to Actions for License Tax:

Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with the damages and costs.

1887 R. S. Sec. 1639; compiled from laws of 1875, p. 512, Sec. 84.

Section 1488. Statement by Person Requiring License: Each tax collector must make diligent inquiry as to all persons in his county liable to pay licenses as provided in this chapter, and must require each person to state under oath or affirmation the probable amount of business which he, or the firm of which he is a member, or for which he is an agent or attorney, or the association or corporation of which he is president, secretary or managing agent, will do in the next succeeding three months; and thereupon such person, agent, president, secretary or other officer must procure a license from the tax collector for the term desired, and the class for which such party is liable to pay; and in all cases where an under-estimate has been made by the party applying, the party making such under-estimate, or the company he represented, are required to pay for a license for the next quarter double the sum otherwise required.

1887 R. S. Sec. 1638.

Section 1489. Monthly Settlement by Tax Collector: On the first Monday in each month the collector must return to the auditor all licenses unsold and be credited therewith, and must, with the auditor, appear at the treasurer's office and pay into the county treasury all moneys collected for licenses sold during the preceding month, take the treasurer's receipt therefor and file a duplicate thereof with the auditor. The auditor must credit the collector and charge the treasurer therewith.

1899, 5th Ses. p. 242, first part of Sec. 1887 R. S. Sec. 1640.
1: 1895, 3d Ses. p. 37, amending laws of

Section 1490. Distribution of License Money: Fifty per cent. of all moneys paid for licenses shall be applied to and constitute a part of the school fund of the school district in which said licenses are collected, forty per cent. to the general road fund of the county in which said licenses are collected and ten per cent. shall be paid into the state treasury: *Provided*, That forty per cent. of all moneys paid for licenses by applicants within incorporated towns, cities, and villages, or cities acting under special charters, shall be paid by the county treasurer to the municipal authorities of such town, city or village for general revenue purposes of such town, city or village.

The collector shall file with the treasurer a statement or report each quarter showing the amount of licenses collected in each school district, incorporated town, city or village, or city acting under special charter.

1899, 5th Ses. p. 243, last part of Sec. of 1887 R. S. Sec. 1640.
1: 1895, 3d Ses. p. 37, amending laws

Section 1491. Fee for Each License: For each license issued, the collector must collect a fee of one dollar, which must be equally divided between the auditor and collector.

1887 R. S. Sec. 1641.

Section 1492. Auctioneers' License: Every auctioneer must obtain a license from the tax collector and must pay therefor five dollars per month: *Provided*, That upon the payment of twenty dollars in advance, an auctioneer may obtain from the tax collector an annual license, which annual license shall date from the 1st day

of March of each and every year.

1899, 5th Ses. p. 377, amending laws of 1887 R. S. Sec. 1642.

Section 1493. Licenses to Take Toll: Licenses to take tolls on bridges or ferries are fixed annually by the commissioners. The licenses therein provided for are issued by the county auditor, and must be obtained from the tax collector of the county.

1887 R. S. Sec. 1643.

Tolls on bridges and ferries, license to take: Secs. 1277, 1278, 1281.

Section 1494. Bankers' Licenses: Persons, associations, or corporations engaged in the occupation of banking, loaning money at interest, or in buying or selling notes, bonds, or other evidences of indebtedness of private persons, or in buying or selling state, territorial, county or city stocks, or other evidences of state, territorial, county, or city indebtedness; or stocks or notes, bonds, or other evidences of indebtedness of incorporated companies, or in buying or selling gold dust, gold or silver bullion, or gold or silver coin, are divided into five classes, and must pay license as follows:

1. Those doing business in the aggregate to the amount of two hundred and fifty thousand dollars per quarter and over, constitute the first class and must pay a license of one hundred dollars per quarter.

2. Those doing business to the amount of two hundred thousand dollars and less than two hundred and fifty thousand dollars per quarter, constitute the second class, and must pay a license of eighty dollars per quarter.

3. Those doing business to the amount of one hundred thousand dollars and less than two hundred thousand dollars per quarter, constitute the third class, and must pay a license of fifty dollars per quarter;

4. Those doing business to the amount of fifty thousand dollars, and less than one hundred thousand dollars per quarter, constitute the fourth class, and must pay a license of forty dollars per quarter;

5. Those doing business in any amount under fifty thousand dollars per quarter, constitute the fifth class, and must pay a license of thirty dollars per quarter.

1887 R. S. Sec. 1644; the disposition of the license collected under this section as provided in Sub. 5 of the section as enacted in 1887, has been stricken out by the Commission. The amendment to Sec. 1640 R. S. Sec. 1490, of this chapter, provides for disposition of all licenses collected under the provision of this chapter.

ACTS IN VIOLATION OF STATUTES, NOT VOID WHEN: To the general rule that an act in violation of a statute forbidding it, is void, there is an exception when the statute is for the protection of the public revenue, and such statute does not make the act itself void, and the act is not malum in se, nor detrimental to good morals. The statutes of Idaho requiring

all persons engaged in the business of loaning money at interest to pay a license tax and obtain a license before commencing such business, make it a misdemeanor to fail to obtain such license, and provide that suit may be instituted to recover the license tax, with stated damages. Plaintiff engaged in such business without obtaining the required license, loaned money at interest to H. et ux., and took notes secured by mortgage. Held, that plaintiff could recover, the act of loaning money being neither malum in se nor malum prohibitum.—*Vermont Loan & Trust Company v. Hoffman et ux.* (Idaho), 49 Pac. 314. The code provision imposing a license tax on banks

is not in conflict with that provision of the state constitution which provides that "no company or corporation formed under the laws of any other country, state or territory shall have * * * any greater rights or privileges than those possessed or enjoyed by cor-

porations of the same or similar character created under the laws of this state," though the national banks organized under United States laws are not subject to the payment of such licenses.—*State v. Thomas Cruse Savings Bank*, 21 Mont. 50, 52 Pac. 733.

Section 1495. License for Billards, Circus, Pawnbroker, Etc.: Licenses must be obtained for the purposes hereinafter named, for which the tax collector must require the payment as follows:

1. From each proprietor or keeper of a billiard, pool or bagatelle table, or any other kind of a table on which games are played with the ball and cue, for each table, fifteen dollars per quarter, and for a bowling alley, five dollars per quarter, for each alley; but no license can be granted for a term less than three months.

2. For each exhibition for pay of a caravan or menagerie, or any collection of animals, circus, equestrian or other acrobatic performance, ten dollars; and for each show for pay of any figures, jugglers, necromancers, magicians, wire or rope dancing, or slight-of-hand exhibition, five dollars each day;

3. From each pawnbroker fifty dollars per quarter.

1899, 5th Ses. p. 268, Sec. 32; 1891, 1st 1887, Sec. 1645.
Ses. p. 237, Sec. 5, amending laws of

Section 1496. When Portion of Preceding Section not Applicable: The provisions of subdivision 2 of the preceding section do not apply to exhibitions or entertainments given for the benefit of churches, schools, or other charitable entertainments, by any amateur dramatic association or literary society of the town or district in which such exhibition or entertainment is given.

1887 R. S. Sec. 1646; the provision exempting Boise City from the provision of Sub. 2 of the preceding section is stricken out by the Commission as contrary to the constitutional provision prohibiting local or special legislation.

Section 1497. Unlawful to Peddle without License: It shall be unlawful for any person to peddle or hawk any goods, wares or merchandise whatsoever without first having procured a license from the county auditor of the county wherein such peddling or hawking is to be conducted.

Each peddler or hawker traveling with a pack and on foot shall pay a license of not less than twenty-five (\$25) dollars nor more than fifty dollars (\$50) per year.

Each peddler or hawker traveling with a wagon or other vehicle shall pay a license of not less than fifty (\$50) dollars nor more than one hundred (\$100) dollars per year.

Each peddler or solicitor taking orders for groceries, clothing, hardware, or other mercantile establishments shall pay a license of not less than seventy-five (\$75) dollars nor more than one hundred and twenty-five (\$125) dollars per year.

1901, 6th Ses. p. 155, Secs. 1, 2, 3 and 4.

Section 1498. Peddler to Exhibit License: Each peddler,

hawker or solicitor taking out license under the provisions of this chapter, shall be compelled to exhibit such license whenever called upon by any party to whom such peddler, hawker or solicitor is endeavoring to make a sale of goods.

1901, 6th Ses. p. 155, Sec. 6.

Section 1499. Duty of County Commissioners, Period of License: It shall be the duty of the county commissioners to fix the amount of said license and the county auditor shall issue such license upon payment of this fee.

No license issued under the provisions of this chapter shall be for a less period than one year.

1901, 6th Ses. p. 156, Secs. 7 and 10.

Section 1500. Applicable, When: The provisions of this chapter shall not be construed to apply to runners traveling for wholesale houses and taking orders from merchants only, nor to peddlers or hawkers in farm products.

1901, 6th Ses. p. 156, Sec. 8.

Section 1501. Money to be Turned into General Fund: All moneys derived from licenses received under the provisions of this chapter shall be turned into the county general fund of each county.

1901, 6th Ses. p. 155, Sec. 5.

Penalty for peddling without license.
Penal Code, Sec. 4803.

Section 1502. Affidavit of Banker, Etc.: Every person required by this chapter to obtain a license, where the amount or class of license is regulated by the amount or average amount of monthly or quarterly business or sales, must before any such license is issued to him, take and subscribe an affidavit before the tax collector or other officer issuing such license, stating the total amount of business done or sales made by him, or the firm or company of which he is a member, or for which he desires a license, during the last preceding quarter, and such affidavit must be preserved in the office of the license collector, and if such amount is greater than the amount for which such person, firm, or company procured a license for such preceding quarter, such person, firm, or company must pay for and procure a license for such preceding quarter according to his or their actual business or sales in addition to the license theretofore procured, before such person, firm, or company can receive any license for the current or succeeding quarter; but this section does not relieve any person, firm or company from the penalties imposed by any other provision of law.

1887 R. S. Sec. 1652.

Penalty for swearing falsely: Penal
Code, Sec. 4648.

PROVISIONS RELATING TO RETAIL LIQUOR DEALERS.

Section 1503. Retail Liquor Dealer's License: No person, by himself, by agent, or otherwise, shall sell spirituous, malt or fermented liquors or wines to be drank in, on, or about the premises where sold, without first procuring a license and giving a bond

as hereinafter provided.

1891, 1st Ses. p. 33, Sec. 1, rewritten.
Penalty for violation of section:
Penal Code, Sec. 4808.

LICENSE IS NEITHER PROPERTY NOR CONTRACT: A liquor license is neither property nor a contract, in any constitutional sense, but is subject at all times to the police

power of the state.—*Hevren v. Reed* (Cal.), 58 Pac. 536.

A license tax for selling intoxicating liquor, held not for a single act of selling, but for selling as a business.—*San Luis Obispo County v. Greenberg*, 120 Cal. 300, 52 Pac. 797.

Section 1504. Application for Liquor License: All applications for a license to sell intoxicating, spirituous, malt or fermented liquors or wines to be drank in, on, or about the premises where sold, must be made to the board of county commissioners of the county wherein it is proposed to sell such liquors, and shall be granted by said board as hereinafter provided.

1891, 1st Ses. p. 33, Sec. 2.

ORDER OF BOARD: An order of the board of supervisors denying an application for a license to sell liquor has no mandatory force and does not

estop the applicant from again soliciting a license. Moreover, such an order cannot be reviewed on certiorari.—*Knox v. Rainbow*, 111 Cal. 539, 44 Pac. 175.

Section 1505. Bond of Liquor Dealer: Before any license is issued the applicant shall produce before said board the receipt of the sheriff, showing that he has paid into his hands the amount due for such license, and execute and deliver to said board his bond to the state of Idaho, which bond shall be in the penal sum of one thousand dollars, with at least two good and sufficient sureties, residents and householders or freeholders of the county, who shall on oath justify in double the penal sum of the bond, to be approved by the said board of county commissioners; said bond shall be in substantially the following form:

Whereas,, of has applied, or is about to apply, to the board of county commissioners of county, Idaho, for a license to sell intoxicating liquors to be drank in, on, or about the premises where sold, at, in said county, for the time of months from and after the

We,, hereby undertake that the above named if granted such license, will keep a quiet and orderly house for the sale of such intoxicating liquors, and will well and faithfully keep and observe all the laws of Idaho in regard to the sale of intoxicating liquors, and will well and faithfully keep and regard the provisions of any ordinances and regulations of any municipal organization of the place where such business is to be conducted relating to the keeping of saloons, taverns and the sale of intoxicating liquors; and if said fails to perform any of the conditions of this bond, or violates any of the provisions of the laws in regard to the sale of intoxicating liquors or the keeping of saloons and taverns, we will pay all costs, damages, fines and forfeitures resulting therefrom, not to exceed the sum of one thousand dollars and no such bond shall be void upon its first recovery, but it may be sued upon and recovered upon from time to time as herein authorized, until the whole penalty thereof is exhausted. The board of county commissioners may re-

quire any licensee under the provisions of this chapter to file an additional bond or furnish additional sureties at any time when in their judgment the bonds furnished by any licensee are insufficient.

1891, 1st Ses. p. 33, Sec. 3.

Section 1506. Amount to be Paid for License: The amount to be paid by each applicant for such license shall be the sum of five hundred dollars per year, in any city, town, village or hamlet, where, at the last general election next preceding the date of the application for license, the total vote of the precinct, as shown by the poll lists, exceeded one hundred and fifty votes, and three hundred dollars per year in all other cities, towns, villages, or hamlets: *Provided*, That all persons engaged in retailing liquors in connection with a hotel or tavern, where meals and lodgings are furnished and kept in good faith for the entertainment of travelers, at any point distant three miles or more outside of the limits of any city, town, village, or hamlet, shall pay a license therefor of one hundred dollars per year: *And provided, further*, That no license, under the provisions of this chapter, shall be for a less or a longer period than one year.

1901, 6th Ses. p. 13, Sec. 4.

ACT IS A POLICE REGULATION: The provisions of Sections 2 and 5, Article VII, of the constitution of Idaho, requiring equality and uniformity of taxation upon the same class of subjects, is not applicable to the license tax imposed by the act regulating the sale of intoxicating liquors. Said act is a police regulation. As a police regulation, the price of licenses may be graduated by some standard provided such standard is reasonable, fair and just. The standard of graduation provided by this section is reasonable, fair and just.—*State v. Doherty*, 2 Idaho, 1105, 29 Pac. 855.

MANNER OF ASCERTAINING NUMBER OF VOTERS: Under this section, the polling list is the only evidence available or permissible to establish the facts required by the statute upon which to fix or base the amount of license to be required; in a precinct where the vote is in excess of 150, although there was in said precinct an incorporated town, village or city, but only one polling place for the whole precinct, the number of votes cast at such precinct is the criterion by which the amount of the license must be fixed. — *Normoyle v. Latah County* (Idaho), 46 Pac. 831. (Cases cited.)

Section 1507. Penalty for Selling to Drunkard After Notice Given: Any wife, mother, father, son, daughter or sister of a person who is an habitual drunkard, or in the habit of getting intoxicated, or the county commissioners, or the mayor of any city, or any county officer, may make complaint to any justice of the peace of the precinct where such person resides or may be staying, or to the probate judge of the county where such person resides or may be staying, alleging the name of such person, the fact of his being an habitual drunkard or in the habit of getting intoxicated, and name or names of the person or persons from whom the person having such habits obtains his liquor, as such relative or officer believes, which complaint shall be verified by the person making the same; whereupon said justice of the peace or said probate judge shall issue a notice in writing to such person or persons so named, notifying him or them that no intoxicating liquors of any kind must be sold or given away by him or them, or at his or their place or places of business, to such person having such habit, which notice must at once be served upon such person or persons as summons are served from justices' courts.

After the service of such notice, if any person or persons so notified shall sell, or give away, or permit any person at his place of business to sell or give away, any intoxicating liquor to such person about whom he or they have received notice as aforesaid, his or their license to sell liquor shall, from that time, be deemed and held to be cancelled and annulled; and said person, and each of said persons, if more than one, shall be liable in a civil action brought in the name or for the benefit of the person making such complaint, in the sum of two hundred dollars for each offense, and the wife, if there be one, may bring such suit without uniting her husband as a party to the action.

1891, 1st Ses. p. 34, Sec. 5.

Misdemeanor: Penal Code, Sec. 4711.

Section 1508. Revocation of License: When any person so licensed shall be convicted of a violation of any of the provisions hereof, or of any of the penal statutes of this state relating to the sale of intoxicating liquors, or shall violate any of the conditions of said bond hereinbefore provided for, the board of county commissioners may, and it is hereby made their duty, to revoke such license; but such revocation shall not be construed to discharge such licensee or his sureties from any damage sustained by, or right accrued to, any person prior to such revocation.

1891, 1st Ses. p. 35, Sec. 6.

Section 1509. Both County and City May Charge License: It shall be competent and lawful for the county commissioners of any county, and also the proper authorities of any city or town situated therein, to require the payment of the licenses herein by law provided, and the granting of the power to license or tax in any city or town shall not be held as in any way conflicting with the provisions of this chapter, the intention being to allow both the county and the city or town authorities to levy and collect a license for the sale of spirituous, malt and fermented liquors and wine as herein provided, and as provided by the charter and ordinance of such city or town.

1891, 1st Ses. p. 36, Sec. 8.

Section 1510. Liability of Bond: The bond required to be given by the provisions of section 1505 shall be liable for the payment of all fines, costs, compensation and damages assessed against the person giving it, in consequence of the sale of intoxicating liquors, and contrary to the provisions hereof.

1891, 1st Ses. p. 37, Sec. 14.

Section 1511. Druggists May Sell Liquors, when: It shall be lawful for regular druggists or apothecaries to sell, without license, spirituous and vinous liquors for medicinal purposes, upon the written prescription of a regular practicing physician of this state, who certifies that in his opinion the health of the party to whom the liquor is to be sold requires or would be promoted by the use of the particular kind of liquor prescribed. It shall also be lawful for druggists, without the license herein provided, to sell wines for sacra-

mental purposes, and to sell alcohol for mechanical and scientific purposes.

1891, 1st Ses. p. 37, Sec. 15.

Section 1512. Duty of Officers to Make Complaint:

It is hereby made the duty of the prosecuting attorney, sheriff, and all constables and peace officers of the county or municipality, knowing of any violation of the provisions of this subdivision to make complaint thereof before the proper tribunal.

1891, 1st Ses. p. 38, Sec. 20.

Section 1513. Intoxicating Liquors Defined:

The words "intoxicating liquors," as used in this chapter, shall be deemed and construed to include spirituous, vinous, malt and fermented liquors, and all mixtures and preparations thereof, including bitters that may be used as a beverage and produce intoxication.

1891, 1st Ses. p. 38, Sec. 21.

Section 1514. License to Sell Liquors Not to be Drank on Place: All persons selling spirituous, malt or fermented liquors or wines in any quantity not to be drank in, on or about the premises where sold, shall pay a license of two hundred dollars per year. No license issued under this section shall be for less or for longer than one year.

1901, 6th Ses. p. 13, Sec. 2.

Penalty for violation: Penal Code, Sec. 4813.

CHAPTER LIX.

SETTLEMENT WITH STATE AUDITOR.

Section.

- 1515. County treasurer must settle on demand.
- 1516. Quarterly settlement by treasurer.
- 1517. Treasurer must transmit funds, when. Balances.
- 1518. Treasurer liable for interest, when.
- 1519. Statement of license and poll tax accounts.
- 1520. Neglect of county treasurer, liability.

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- 1521. Report of county auditor.
- 1522. Report of auditor transmitted to whom.
- 1523. Failure to report, liability.
- 1524. Statement by state auditor.
- 1525. County treasurer to file with county auditor, what.
- 1526. County auditor to make proper entries.
- 1527. State auditor may examine books.
- 1528. Prosecution of delinquents.
- 1529. May employ other counsel.

Section 1515. County Treasurer Must Settle Upon Demand: The treasurers of the respective counties must at any time, upon the order of the state auditor and the treasurer of the state, settle with the state auditor, and pay over to the treasurer all moneys in their possession, belonging to the state.

1901, 6th Ses. p. 285, Sec. 155, first part.

SETTLEMENT OF TREASURERS: All taxes levied and collected for state purposes must be paid into the state treasury without any deductions or other charges.—Cunningham v. Moody, 2 Idaho, 862, 28 Pac. 395, A county

treasurer, on settlement with the state controller, cannot retain allowances made by him as extra compensation, but must pay it into the county treasury and turn it over to his successor in office.—McKee v. Monterey County, 51 Cal. 275.

Section 1516. Quarterly Settlement by Treasurer:

The treasurers of the several counties respectively, must, between the first and fifteenth days of January, April, July and October of each year, make out and transmit by mail, express, or other safe conveyance, a statement to the state auditor and treasurer, and settle in full with the state auditor, and pay over in cash, without expense to the state, to the state treasurer all funds which have come into their hands as county treasurers before the close of business at the end of the previous month, and belonging to the state.

1901, 6th Ses. p. 286, Sec. 156.

Section 1517. Treasurer Must Transmit Funds, When. Balances:

Whenever there is in the hands of any county treasurer in this state, the sum of one hundred dollars to the credit of the state of Idaho, in any fund or funds, except state school land fund, such treasurer shall, forthwith, pay over in cash, to the state treasurer the full amount in his hands to the credit of the state, without expense to the state for the transmission thereof, which expense shall be paid by the county, and therewith furnish to the state auditor a statement showing on what accounts such payment is made, and the amount of each: Provided, That prior to making such payment such treasurer shall ascertain, from the county auditor, the amount owing to the state by the county of which he is such officer; and if he has on hand to the credit of the state in any fund an amount greater than is required to satisfy the claims of the state on that account he shall retain the balance in such fund, and if it be in the state ad valorem tax fund, shall forthwith transfer the same to the warrant redemption fund of the county, or, if, there is no such fund, then to the current expense fund of the year in which such revenue was derived, or if such fund is balanced then to the next succeeding year in which there are outstanding warrants unpaid, notifying the auditor of such transfer.

1901, 6th Ses. p. 285, Sec. 155, part of.

Section 1518. Treasurer Liable for Interest, When:

Any county treasurer who fails to comply with the provisions of the preceding section shall be liable to the state for the interest, at the rate of seven per cent. per annum, on such sum or sums as are therein required to be paid over to the state treasurer, from the date at which such payment should have been made, as provided therein, to the date of the payment of the same which interest may be collected by an action on the official bond of the treasurer so failing, on one or more causes of action.

1901, 6th Ses. p. 285, Sec. 155, last part.

Section 1519. Statement of License and Poll Tax Accounts: Each county treasurer must, at the time of making his settlement with the state auditor, produce to him statements of transactions had in state and county licenses since the last settlement, which statement must be made by the county auditor, according to forms which are furnished by the state auditor for that purpose.

1901, 6th Ses. p. 286, Sec. 157.

Section 1520. Neglect of County Treasurer, Liability:

Every county treasurer who neglects or refuses to transmit such statement to the auditor and treasurer at the times specified in this chapter, and to settle and make payment as required by this chapter, is liable on his official bond.

1901, 6th Ses. p. 286, Sec. 158.

Section 1521. Report of County Auditor: The auditor of each county, between the first and fifteenth day of each month in which the treasurer of his county is required to settle with the state auditor, must make in duplicate and verify by his affidavit a report to the state auditor showing specifically the amount due the state from each particular source of revenue at the close of business on the last day of the preceding month.

1901, 6th Ses. p. 286, Sec. 159.

Quarterly settlements of treasurer:
Sec. 1516.

Section 1522. Report of Auditor Transmitted to Whom: The auditor must at once transmit by mail or express to the state auditor one copy of the report, and must deliver the other to the treasurer of his county.

1901, 6th Ses. p. 286, Sec. 160.

Section 1523. Failure to Report, Liability: Every county auditor who fails to make and transmit the report required by this chapter, or any report or statement required by this title, is liable on his official bond.

1901, 6th Ses. p. 286, Sec. 161.

Section 1524. Statement by State Auditor: The state auditor must, after the treasurer has made settlement and payment, enter upon each copy of the auditor's report a statement showing: The amount of money by the county treasurer paid into the treasury of the state. He must then return one copy of the report to the county treasurer.

1901, 6th Ses. p. 286, Sec. 162.

Section 1525. County Treasurer to File with County Auditor, what: The county treasurer must file with the auditor of his county the copy returned to him by the state auditor.

1901, 6th Ses. p. 287, Sec. 163, first part.

Section 1526. County Auditor to Make Proper Entries: The county auditor must then make the proper entries in his account with the treasurer.

1901, 6th Ses. p. 87, Sec. 163, last part.

Section 1527. State Auditor May Examine Books: The state auditor or any person authorized by him may examine the books of any officer charged with the collection and receipt of state taxes and revenues.

1901, 6th Ses. p. 287, Sec. 164.

Section 1528. Prosecution of Delinquent: If he believes any officer has been guilty of defrauding the state revenues, or has neglected or refused to perform any duty relating to the revenue, he must direct the prosecuting attorney or other counsel to prosecute

the delinquent.

1901, 6th Ses. p. 287, Sec. 165.

Section 1529. May Employ Other Counsel: The state auditor or attorney general may employ other counsel than the prosecuting attorney, and the expenses must be paid out of the state treasury.

1901, 6th Ses. p. 287, Sec. 166.

AUDITOR NOT AUTHORIZED TO ISSUE WARRANT: The Idaho constitution, Article VII, Section 13, provides that no money shall be drawn from the treasury but in pursuance of appropriations made by law. Held, that in the absence of an appropriation,

the auditor properly refused to issue a state warrant in payment of legal services of counsel employed by the state auditor under the provisions of this section.—*Kingsbury v. Anderson*, State Auditor (Idaho), 51 Pac. 744. This section does not make any appropriation for the payment of such services.—Id.

CHAPTER LX.

MISCELLANEOUS PROVISIONS.

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- 1530. Errors, defects, etc., may be corrected.
- 1531. Correcting delinquent list and publication.
- 1532. Corrected publication, how made.
- 1533. Initials may be used to designate, what.
- 1534. No assessment illegal for informality.
- 1535. Removal of officer for neglect of duty.
- 1536. Taxes paid in lawful money.
- 1537. Certain officers to make annual settlement.

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- 1538. Each officer must perform his own duties.
- 1539. All assessment books open to inspection.
- 1540. All taxes, etc., go to current expense fund.
- 1541. Tax, apportionment of, excess of revenue, disposition of.
- 1542. Certain fines, licenses and poll taxes to go to current expense fund.
- 1543. General reference to school and highway taxes.

Section 1530. Errors, Defects, Etc., May be Corrected: Omissions, errors or defect in form in any assessment book, when it can be ascertained therefrom what was intended, may be supplied or corrected by the assessor at any time prior to the delinquent sale and after the original assessment was made.

1901, 6th Ses. p. 287, Sec. 167.

Section 1531. Correcting Delinquent List and Publication: When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

1901, 6th Ses. p. 287, Sec. 168.

Section 1532. Corrected Publication, How Made: The publication must be made in the same manner as the original publication, and for not less than one week.

1901, 6th Ses. p. 287, Sec. 169.

Original publication: Sec. 1412.

Section 1533. Initials May be Used to Designate What: In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations and figures may be used to designate

nate the township, range, section or parts of section, lot or block, and kind of improvement or personal property in the extension thereof.

1901, 6th Ses. p. 287, Sec. 170.

Section 1534. No Assessment Illegal for Informality:

No assessment, or act relating to assessment, or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

1901, 6th Ses. p. 287, Sec. 171.

Section 1535. Removal of Officer for Neglect of Duty: Whenever any assessor, collector, auditor, treasurer, or any other officer upon whom any duties devolve under this title, or under any other revenue act of this state, willfully neglects or refuses to perform any such duties, or performs them in a careless or incompetent manner, he may be removed from office in the manner prescribed by law, and when proceedings are commenced to remove such officer from his office, the board of commissioners, (and in case such officer be a commissioner, then the probate judge,) may suspend such assessor, collector, auditor, treasurer, or other officer from his powers and duties under this title, and under any other revenue act and appoint a competent person in his place, until the proper tribunal has either removed or acquitted such suspended officer; and any act concerning the revenue or assessment, or the collection of taxes or sale of property for the non-payment of taxes, performed by any such temporary officer, is as valid and of the same force and effect as if performed by the suspended officer; Provided, That such appointee has first qualified and given such bond with sureties for the faithful performance of the duties of his office as required of persons elected thereto.

1901, 6th Ses. p. 287, Sec. 172.

Proceedings for removal of public of-

ficers; Penal Code, Chap. CCXXVI, also Sec. 4547.

Section 1536. Taxes Paid in Lawful Money: Taxes must be paid in lawful money of the United States.

1901, 6th Ses. p. 288, Sec. 173.

LAWFUL MONEY: A statute requiring the payment of taxes in any other than lawful money at par is void,

as being in conflict with the act of congress of February 25, 1862.—Haas v. Misner & Lamkin, 1 Idaho, 170.

Section 1537. Certain Officers to Make Annual Settlement: Every assessor and tax collector, prosecuting attorney and county treasurer must annually, on the first Tuesday after the first Monday of January, make a settlement with the county auditor and with the clerks of all cities, towns, villages and independent school districts authorized by law to collect revenues as provided by this title, in his county, of all transactions connected with the revenue for the previous year, and thereafter the auditor shall not issue any certificate for the payment of any money to the treasurer by the tax collector on account of the revenues of such year, until after the date when the tax collector is authorized by law to collect delinquent taxes; and on revenues reported collected after such time the penalty of ten per cent., on account of delinquency, shall be reported at the

same time and included in the regular reports of the assessor to the auditor and officers named therein concerning the collection of revenue.

1901, 6th Ses. p. 288, Sec. 174.

Section 1538. Each Officer Must Perform His Own Duties: The treasurer, tax collector, assessor, auditor, clerk of the board of equalization, and each member of the board must separately perform the duties required of him in his office, and must not, except in the cases provided by law, perform the duties required of any other officer under this title.

1901, 6th Ses. p. 288, Sec. 175.

Penalty of any officer for neglect of

Penalty of collecting or disbursing duty in relation to revenue: Penal officer for neglecting duty: Penal Code, Sec. 4798. Code, Sec. 4605.

Section 1539. All Assessment Books Open to Inspection: The books, papers, and accounts of each officer relating to the assessment or collection of taxes, or to the receiving, auditing or disbursing moneys collected for the use or benefit of the state or of any county, must at all times during office hours, when not necessarily in use by the officers, be open for any person whomsoever to inspect or copy, without any fee or charge.

1901, 6th Ses. p. 289, Sec. 176.

Section 1540. All Taxes, Etc., go to Current Expense Fund: All taxes levied and collected in each county for county purposes, including such special taxes as are or may be authorized by law, all fines and forfeitures, all receipts from toll roads, bridges and ferries, and all poll taxes shall, after the amount belonging to the state has been deducted, be paid into and constitute a fund to be called the "current expense fund" which shall be used for the payment of the current expenses of the county for the current year: Provided, That nothing in this section shall be so construed as to interfere with or relate to taxes levied for road district and school purposes, or school moneys received from the sale of school lands or otherwise, or taxes levied for the payment of interest on or redemption of county bonds or county warrants.

1901, 6th Ses. p. 83.

Section 1541. Tax, Apportionment of, Excess of Revenue, Disposition of: All taxes levied and collected in each county shall be apportioned to the several funds of the year for which levied, including state ad valorem until the full amount levied by the state has been apportioned, state wagon road, current expense, general school road, bridge and warrant redemption funds, and such special funds as may have been created for the payment of interest on and redemption of county bonds. No current expense of any county for such year shall be paid out of any fund other than current expense, road and bridge, the funds of which may be ordered by the board of county commissioners to be transferred from one to the other, as circumstances may require, and proper debits and credits made to each fund from and to which transfer is made. All warrants payable out of such funds shall be paid out of the re-

spective funds on which drawn, and charged in the aggregate against such fund, in the amount at any time returned redeemed.

Each of the state funds, the bond fund, the general school and warrant redemption funds shall be charged in like manner with all amounts properly chargeable against and paid out of such funds.

Any excess of revenue in any funds, to pay the liabilities of the year against the same, shall, (except in case of current expense fund, which, as provided by law, shall go to the warrant redemption fund) be credited to the revenues of the like fund for the succeeding year until all liabilities which have been created against such fund are fully paid, satisfied and discharged, and thereupon any surplus of revenues therein shall be transferred to the warrant redemption fund, if there is such, otherwise to the current expense fund of the succeeding year.

1901, 6th Ses. p. 289, Sec. 177.

Section 1542. Certain Fines, Licenses and Poll Taxes to go to Current Expense Fund: All revenues derived from fines imposed against county officers, the licenses of toll roads, bridges, and ferries, and all poll taxes, other than road per capita tax, shall be apportioned to the current expense fund of the county for the year in which collected.

1901, 6th Ses. p. 289, Sec. 178.

Section 1543. General Reference to School and Highway Taxes: School taxes are provided for in Title V, Chapter XXXVII, section 1036 of this Code and the manner of levying and collecting highway taxes and road poll taxes are designated in Title VI, Chapter XLVI, sections 1161 to 1180 inclusive of this Code.

New Sec. by Commission.

TITLE VIII.

GOVERNMENT OF COUNTIES.

Chap. LXI. County Boundaries and County Seats.

Chap. LXII. Counties as Bodies Corporate.

Chap. LXIII. The Board of County Commissioners.

Chap. LXIV. County Officers.

Chap. LXV. Precinct Officers.

Chap. LXVI. Salaries and Fees of Office.

Chap. LXVII. County Charges.

Chap. LXVIII. Redemption of County Indebtedness.

Chap. LXIX. The County Poor.

CHAPTER LXI.

COUNTY BOUNDARIES AND COUNTY SEATS.

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1544. Ada.

1545. Bannock.

1546. Bear Lake.

Section.

1547. Bingham.

1548. Blaine.

1549. Boise.

Section.
 1550. Cassia.
 1551. Canyon.
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 1558. Lemhi.
 1559. Lincoln.
 1560. Nez Perce.
 1561. Oneida.
 1562. Owyhee.
 1563. Shoshone.
 1564. Washington.

Section 1544. Ada: That all that portion of the state of Idaho included within the following lines, to-wit: Commencing at the confluence of Moore's creek with Boise river, at the center of the channel of Boise river, thence in a straight line north forty-four degrees thirty-eight minutes west until said line intersects the north line of township five north of range one east Boise meridian; thence due west to the northwest corner of township five north of range one west of Boise meridian; thence due south to the northwest corner of township three north of range one west; thence due east to the northeast corner of section four of township three north of range one west; thence due south to the southeast corner of section thirty-two of township two north of range one west; thence due west to the northwest corner of township one north of range one west; thence due south to a point in the middle of the channel of Snake river, where the line between township one south of range one west and one south of range two west of Boise meridian crosses the river; thence up said Snake river along the center of the channel thereof to a point opposite the mouth of Bruneau river thence in a straight line in a northeasterly direction to a point in the center of the channel of Boise river opposite the mouth of Moore's creek, the place of beginning, be and the same is hereby organized into a county to be called the county of Ada, and the county seat of said county is hereby located at Boise.

County created December 22, 1864, 2d Ses. p. 430.

Portion cut off in creation of Washington county, February 20, 1879, 10th Ses. p. 40.

Boundary between Ada and Boise defined January 31, 1883, 12th Ses. p. 67.

Canyon county created from portion by act approved March 7, 1891, 1st Ses. p. 155.

Provision for survey of line between Ada and Elmore approved February 9,

1895, 3d Ses. p. 15.

(See field notes in county recorder's office.)

COUNTY SEATS: Section 2, Article XVIII of the constitution was not intended to apply to the location of a county seat, consequent upon the organization of a new county. The legislature has the right to submit to a vote of the people the question of fixing the county seat.—Doan v. Com'rs of Logan County, 2 Idaho 781, 26 Pac. 167.

Section 1545. Bannock: That all that portion of the state of Idaho included within the following lines, to-wit: Commencing at the intersection of the township line between townships numbers four (4) and five (5), south, with the Snake river, thence down the Snake river, southwesterly, to the mouth of Portneuf river, thence up Portneuf to what is known as the point of the mountain, about four miles northwest of Pocatello; thence southerly in a straight line to the top of the range, thence along the crest of the mountains between Malad and Marsh valleys to a point on the top of the range, due west of a point one mile south of the present southern boundary

of the townsite of Oxford; thence due east to the Bear Lake county line; thence northerly and easterly along the line of Bear Lake county to the line of the state of Wyoming; thence north to the intersection of township line between townships numbers four (4) and five (5) south with the line of the state of Wyoming; thence west along said township line between townships numbers four (4) and (5) to the place of beginning is hereby organized into the county of Bannock, and the county seat of said county is hereby declared to be at Pocatello.

Created from portion of Bingham County by act approved March 6, 1893, 2d Ses. p. 170.

The act of March 6, 1893 (2d Ses. p. 170), creating the county of Bannock, was examined and held to be constitutional in *Sabin v. Curtis* (Idaho), 32 Pac. 1130. It was further held that said act was not an apportionment law and neither granted nor took away any legislative representation; that the new county remained a part of the Bingham

county representation district, and that the senatorial districts were in no wise changed by said act; that the electors of Bannock county had the same right in election of senators and representatives in said districts, as they had prior to the creation of said county.—*Sabin v. Curtis* (Idaho), 32 Pac. 1130.

Note.—The apportionment for members of the legislature has been changed since the decision in *Sabin v. Curtis*; see Section 30.

Section 1546. Bear Lake: That all that portion of the state of Idaho included within the following lines to-wit: Commencing at the twenty-third mile post on the boundary line between Utah and Idaho, and running thence northerly along the summit of the range of mountains between Cache valley and Bear Lake valley to the corner of townships nine and ten south of range forty-one east; thence east twelve miles; thence north to the summit of the divide between the waters of Bear river and the waters of Blackfoot river; thence easterly along said last named summit to the line between Wyoming and Idaho; thence south on said last named line to the south-east corner of Idaho; thence west to the place of beginning; be, and the same is hereby organized into the county of Bear Lake, and the county seat of said county is hereby fixed at the town of Paris.

County created January 5, 1875, 8th Ses. p. 720.

Section 1547. Bingham: That all that portion of the state of Idaho contained within the following boundaries, to-wit: Beginning at a point directly north of the Big Southern butte, where the township line between sections three and four meets said point, thence due south to a point where it intersects with the first standard parallel south; thence easterly on the said first standard parallel south to the center of the channel of Snake river; thence up the center of the channel of said Snake river to the intersection of the township line between townships numbers four and five south; thence east along the said township line between townships numbers four and five south to the east boundary line of the state of Idaho; thence north along said boundary line till it intersects the line between townships numbers three and four north; thence west along said township line between townships three and four north to the place of beginning, is hereby established as the county of Bingham, and the

county seat of said county is hereby located at the town of Blackfoot.

County created by act approved January 13, 1885, 13th Ses. p. 41.

Act requiring survey between Bingham and Lemhi approved February 5, 1885, 13th Ses. p. 46.

Boundaries defined by act approved February 7, 1889, 15th Ses. p. 37 (creat-

ing Elmore and Logan).

Fremont county created from northern portion of, by act approved March 4, 1893, 2d Ses. p. 94.

Bannock county created from southern portion of, by act approved March 6, 1893, 2d Ses. p. 170.

Section 1548. Blaine: That all that portion of the state of Idaho contained within the following boundaries, to-wit: Commencing at a point in the center of the channel of Snake river, where the first standard parallel south intersects said river; thence west on said parallel to a point directly south of the big Southern butte; thence due north until it intersects the township line between townships 10 and 11 north, the same being the southern boundary of Lemhi county; thence west along said township line to the east line of Custer county; thence southeasterly along the easterly line of Custer county; and continuing thence in a westerly and northwesterly direction by an irregular line along the southerly line of Custer county to the easterly line of Boise county; thence along the east boundary line of Elmore county to a point where said line intersects the range line between ranges eleven and twelve east of Boise meridian; thence due south along said range line to the northeast corner of township three south of range eleven east of Boise meridian thence east along the township line between townships two and three south to a point where said township line intersects the range line between ranges twenty-five and twenty-six east; thence south along said range line to the center of the channel of Snake river; thence up said river along the center thereof to the place of beginning, is hereby created a county, named and to be known as the county of Blaine, and the county seat of said county is hereby established at the town of Hailey.

County created from Alturas and Logan by act approved March 5, 1895, 3d Ses. p. 31.

Portion cut off and created into Lincoln county by act approved March 18, 1895, 3d Ses. p. 170.

The act of March 5, 1895, organizing the county of Blaine, declared valid and constitutional. The court further held that it would not examine the journals of the legislature for the purpose of inquiring into the motive which actuated the legislature or any member thereof, in enacting a law.—*Blaine County v. Heard* (Idaho), 45 Pac. 890. The state, having, through each of its co-ordinate branches of government, repeatedly recognized Blaine county as a county

and legal subdivision of the state, is estopped, after the lapse of nearly four years, from questioning the regularity of the passage of the act creating the county.—*People ex rel. Attorney General v. Alturas County et al.* (Idaho), 55 Pac. 1067.

Note.—In the cases of *Blaine County v. Heard* (Idaho), 45 Pac. 890; *Wright v. Kelly* (Idaho), 43 Pac. 565; *Water Co. v. Stockslager* (Idaho), 43 Pac. 568; *Ravenscraft v. Board* (Idaho), 47 Pac. 942; *Blaine County v. Smith* (Idaho), 48 Pac. 286; *Bingham County v. Bannock County* (Idaho), 51 Pac. 769; *Blaine County v. Lincoln County* (Idaho), 52 Pac. 165, the court has recognized the legal existence of Blaine county.

Section 1549. Boise: That all that portion of the state of Idaho included within the following lines, to-wit:

Commencing at the confluence of Moore's creek with Boise river at the center of the channel of Boise river, thence north forty-four degrees thirty-eight minutes west thirty-two miles forty-eight chains fifty-six links to a pine tree standing on the south bank of

Payette river at a distance of about two miles north from Pickett's corral near the mouth of what is called Black Canon on said Payette river; thence northerly to the center point on the summit of Squaw creek butte; thence northerly on the summit of the dividing range between the waters of Squaw creek on the east and Haw creek on the west to the southeast corner of Washington county; thence in a northerly direction along the east boundary line of Washington county to the point nearest to the divide between the source of Goose creek and the source of Secesh creek; thence in an easterly and southeasterly direction following the divide which separates the waters of Payette river and its tributaries from the waters of Salmon river and its tributaries to the line of Custer county; thence in a southerly direction to the head waters of the north fork of the Boise river; thence down the center of the channel of the north fork of Boise river and the main Boise river to the point of beginning, be and the same is hereby organized into the county of Boise and the county seat of said county is hereby located at Idaho City.

County created by act approved February 4, 1864, 1st Ses. p. 628.

Portion cut off in creating Ada county by act approved December 22, 1864, 2d Ses. p. 430.

Boundary between Boise and Ada de-

fined by act approved January 31, 1883, 12th Ses. p. 67.

Boundary between Boise and Idaho counties defined by act approved January 15, 1887, special laws p. 120.

Section 1550. Cassia: That all that portion of the state of Idaho contained within the following boundaries, to-wit: Commencing at a point in the center of Snake river, where the meridian of longitude one hundred and thirteen degrees west from Greenwich crosses that river; thence down that river to the thirty-eighth meridian of longitude, (west from Washington); thence south along said meridian to the line dividing Idaho and the state of Nevada; thence due east along said line to said meridian of longitude one hundred and thirteen degrees; thence due north along said meridian to the place of beginning; be, and the same is hereby organized into the county of Cassia and the county seat of said county is hereby declared to be at Albion.

County created by act approved January 20, 1879, 10th Ses. p. 43.

Section 1551. Canyon: That all that portion of the state of Idaho included within the following boundaries, to-wit: Commencing at a point in the middle of the channel of Snake river, where the line between township one south of range one west, and one south of range two west of Boise meridian crosses said river, and running thence due north to the northwest corner of township one north of range one west of Boise meridian; thence due east to the southeast corner of section thirty-two of township two north, of range one west; thence due north to the northeast corner of section four of township three north of range one west; thence due west to the northwest corner of township three north, of range one west; thence due north to the northwest corner township five north, range one west; thence due east along the northern boundary of Ada county to the southwest boundary of Boise county; thence in a northwesterly

direction along the boundary of Boise county to a pine tree standing on the south bank of the Payette river at a distance of about two miles northwardly from Pickett creek, and near the mouth of what is known as Black Canon on said Payette river; thence northwardly to the central point on the summit of the Squaw creek butte; thence northwardly on the summit of the dividing ridge between the waters of Squaw creek on the east and Haw creek on the west, to the south boundary line of Washington county; thence along the south boundary line of Washington county to the middle of the channel of Snake river; thence up the middle of the channel of Snake river to the boundary line between Idaho and Oregon; thence south along the boundary line between Idaho and Oregon to the middle of Snake river; thence up the middle of the channel of Snake river to the place of beginning, is hereby created into the county of Canyon, and the county seat of said county of Canyon is hereby declared to be at Caldwell.

Created from portion of Ada county p. 155.
by act approved March 7, 1891, 1st Ses.

Section 1552. Custer: That all that portion of the state of Idaho included within the following boundaries, to-wit: Commencing at the confluence of the Pahsimeroi river with the Salmon river, and running thence up Pahsimeroi river to the mouth of Big creek; thence up Big creek, and on a line from the head thereof, with the general course of said creek to the summit of the divide between the waters of the Pahsimeroi and Lemhi rivers thence southeasterly on the summit of said divide to a point due west from the headwaters of Little Lost river; thence due east to the headwaters of said Little Lost river; thence down Little Lost river to the point where the trail leading to Pass creek crosses said Little Lost river; thence in a direct line to the head of Pass creek; thence down said Pass creek to Big Lost river; thence along Big Lost river to the mouth of Antelope creek; thence up Antelope creek to the divide which separates its waters from those of Little Wood river; thence westerly along and upon the summit of the ridge of mountains dividing the headwater of the East Fork of the Solomon river, from the waters of the Little or Big Wood river, and continuing westerly on said divide between the east fork of Salmon and Wood rivers, to the main Salmon river; thence along said Salmon river to the mouth of Fall creek, a stream entering the Salmon river at a point about fifteen miles northerly from Sawtooth City; thence up said Fall creek to Pettit lake in a right line to the right of a creek entering said lake at the west end thereof; thence up said last mentioned creek to the summit of the Sawtooth mountains; thence northerly along the summit of the Sawtooth mountains to the divide which separates the waters flowing into the South Payette river and Bear Valley creek from those flowing into the main Salmon river and Cape Horn creek; thence along said divide to the Middle Fork of the Salmon river; thence down the Middle Fork of the Salmon river to the mouth of Loon creek; thence up Loon creek to the mouth of Warm Spring creek; thence up Warm Spring creek, and to the divide which

separates the waters of Yankee Fork on the south and Loon and Deep creeks on the north, and following said divide in an easterly direction around the head of Panther creek, to the divide between Hat creek and Ellis creek; thence on the divide between Hat and Ellis creeks in an easterly direction to the Salmon river; thence up the main channel of said Salmon river to the place of beginning; is hereby created into the county of Custer, and the county seat of said county is hereby declared to be at Challis.

County created January 8, 1881, 11th approved February 4, 1889, 15th Ses. p.
Ses. p. 340, in effect April 1, 1881. 26.
Boundaries re-defined by amendment

Section 1553. Elmore: That all that portion of the state of Idaho contained within the following boundaries, to-wit: Beginning at a point on top of the Sawtooth range of mountains, where the counties of Blaine, Boise and Custer unite, thence along the present line of Custer county to a point where said line intersects the summit of the Sawtooth range; thence following the spur of said range to where the trail crosses the summit of what is known as Mattingly creek divide; thence along said divide to a point as far east as the range line between ranges eleven and twelve east would be if extended north; thence south to Snake river; thence down the middle of the channel of Snake river to a point opposite the mouth of Bruneau river; thence in a straight line in a northeasterly direction to a point in the center of the channel of Boise river, opposite the mouth of Moore's creek; thence upon and along the boundary line of the county of Boise to the place of beginning, is hereby created into the county of Elmore, and the county seat of said county is hereby located at the town of Mountainhome.

County created from portion of Al- counties approved February 9, 1895, 3d
turas by act approved February 7, Ses. p. 15.
1889, 15th Ses. p. 37.

Act to better define and locate the field notes of survey of said line are
boundary line between Elmore and Ada on file in offices of recorders of Elmore
and Ada counties.

Section 1554. Fremont: That all that portion of the state of Idaho contained within the following boundaries, to-wit: Commencing at a point where the northern boundary of Idaho intersects the western boundary of Wyoming; thence running westerly along the northern boundary of Idaho to a point where the range line between ranges thirty and thirty-one east of Boise meridian intersects said state line; thence due south to the southwest corner of township eleven north, range thirty-one east of Boise meridian; thence west along the township line between townships ten and eleven north to a point on said line due north of the big Southern butte; thence due south to the township line between townships three and four north; thence due east along the township line between townships three and four north to the east boundary line of the state of Idaho; thence north along the said boundary line to the place of beginning be and the same is organized into the county of Fremont, and the county seat of said county is hereby located at the town of St. Anthony.

County created from northern portion March 4, 1893, 2d Ses. p. 94.
of Bingham county by act approved Portion of Lemhi annexed by election

authorized by act approved March 11, 1895, 3d Ses. p. 145; re-enacted February 14, 1899, 5th Ses. p. 273.

The act of March 4, 1893, creating

Fremont county, is valid and not in conflict with any provisions of the constitution. — *Allen v. Curtis*, County Treasurer (Idaho), 32 Pac. 1133.

Section 1555. Idaho: That all that portion of the state of Idaho included within the following boundaries, to-wit: Commencing at the junction of Salmon river with Snake river; thence up the middle of the channel of Salmon river to the mouth of Deep creek; thence up the middle of the channel of Deep creek to the mouth of the right fork of Deep creek; thence up the middle of the channel of said right fork of Deep creek to the point where the line between ranges one (1) and two (2) west, of Boise meridian, crosses Deep creek; thence due north along said line to the point where said line crosses Willow creek; thence down the middle of the channel of Willow creek to its junction with Lawyers' canyon; thence down the middle of the channel of Lawyer's canyon to its junction with the Clearwater river; thence down the middle of the channel of Clearwater river to the mouth of Lolo creek; thence up the middle of the channel of Lolo creek to the head of Lolo creek, and thence in a direct line to the Lolo pass at the summit of the Bitter Root mountains; thence southeasterly and southerly following the present defined boundary line between the state of Idaho and Montana to the northwest corner of Lemhi county; thence south to the present line of Custer county; thence southwesterly along the present line of Custer county to the present line of Boise county; thence along the present line of Boise county to the east line of Washington county; thence along said line of Washington county to the head of the falls at the lower end of Round valley; thence due west to Snake river; thence following the middle of the channel of Snake river to the place of beginning is hereby created into the county of Idaho, and the county seat of said county is hereby located at Mt. Idaho.

County created February 4, 1864, 1st Ses. p. 628.

Boundaries amended January 8, 1875, 8th Ses. p. 730.

Portion cut off in creating Washington county, February 20, 1879, 10th Ses. p. 40.

Act to define boundary between Idaho and Boise counties approved January 15, 1887, special laws p. 120.

Boundaries better defined by act approved February 7, 1889, 15th Ses. p. 54.

Boundaries defined by act approved March 2, 1891, 1st Ses. p. 117, re-enacted February 2, 1899, 5th Ses. p. 79.

Boundary between Idaho and Washington better defined by act approved February 23, 1895, 3d Ses. p. 22, re-enacted February 2, 1899, 5th Ses. p. 22.

Section 1556. Kootenai: That all that portion of the state of Idaho included within the following boundaries, to-wit: Commencing on the boundary line, between the state of Idaho and the state of Washington at the main divide between the waters of Palouse river and Hangman's creek; thence easterly along the said divide to the westerly boundary line of Shoshone county; thence north along the western boundary of Shoshone county to the northwest corner of Shoshone county; thence in an easterly direction along the summit of the Coeur d'Alene range of mountains to the Montana line; thence north along said Montana line to the forty-ninth degree of north latitude; thence west along said forty-ninth degree of north latitude

to the Washington line; thence south along the line of the state of Washington to the place of beginning; be and the same is hereby organized into the county of Kootenai, and the county seat of said county is hereby declared to be at Rathdrum.

Act creating Kootenai county, embracing territory north of parallel 48 degrees N. latitude, approved December 22, 1864, 2d Ses. p. 432.

Act defining boundaries practically as at present approved January 9, 1867, 4th Ses. p. 126.

Section 1557. Latah: That all that portion of the state of Idaho contained within the following boundaries, to-wit: Commencing at a point where the middle line of township thirty-eight north intersects the west line of Shoshone county; thence west to Big Potlatch creek, where it first intersects the said middle line of township thirty-eight north; thence down said creek southwesterly to a point where it intersects the middle line of township thirty-seven north; thence due west to the line between the states of Idaho and Washington; thence due north along said state line to the main divide between the waters of Palouse river and Hangman's creek; thence easterly along said divide to the west line of Shoshone county; thence south along said line to the place of beginning, is hereby formed and organized into a county, to be known and designated as the county of Latah, and the county seat of said county is hereby located at the town of Moscow.

Act creating Latah county, embracing territory from Clearwater to parallel 48 degrees N. latitude, approved December 22, 1864, 2d Ses. p. 432, re-

pealed January 9, 1867, 4th Ses. p. 126.

The county as it now exists was created by act of congress, approved May 14, 1888.

Section 1558. Lemhi: That all that portion of the state of Idaho contained within the following boundaries, to-wit: Commencing at a point on the boundary line between the states of Idaho and Montana, directly north of the confluence of the Middle Fork of the Salmon river with the Main Salmon river; thence south to the northern line of Custer county; thence along said line of Custer county in a northeasterly direction to the confluence of Pahsimeroi river with the Salmon river; thence in a southeasterly direction along said line of Custer county to a point where said last named line intersects the township line between townships ten and eleven north; thence east along said township line between townships ten and eleven north to the southwest corner of township eleven north of range thirty-one east, Boise meridian; thence due north to the boundary line between the states of Idaho and Montana; thence northwesterly along the line of Montana and Idaho to the place of beginning; be and the same is hereby organized into the county of Lemhi, and the county seat of said county is hereby located at the town of Salmon.

County created by act approved January 9, 1869, 5th Ses. p. 117.

Boundaries amended by creation of Custer county, act approved January 8, 1881, 11th Ses. p. 340.

South and east boundary defined by act approved March 7, 1891, 1st Ses. p.

166, re-enacted February 6, 1899, 5th Ses. p. 111.

Portion stricken off and added to Fremont county by an election authorized by act approved March 11, 1895, 3d Ses. p. 145, re-enacted February 14, 1899, 5th Ses. p. 273.

Section 1559. Lincoln: That all that portion of the state of Idaho included within the following boundaries, to-wit: Commencing at the northeast corner of township three south, of range eleven, east of Boise meridian; thence south following the township lines between ranges eleven and twelve east of Boise meridian to a point where the said line intersects the middle of the channel of the Snake river; thence easterly following the middle of the channel of Snake river to a point where the range lines between ranges twenty-five and twenty-six east, intersect said channel; thence north along said range line to a point where said line intersects the township line between townships two and three south; thence west along the said line to the place of beginning, is hereby created into the county of Lincoln, and the county seat of said county is hereby established at the town of Shoshone.

Created from portion of Blaine county by act approved March 18, 1895, 3d Ses. p. 170.

The act of March 18, 1895, organizing the county of Lincoln, held valid and constitutional.—Blaine County v. Heard (Idaho), 45 Pac. 890.

Section 1560. Nez Perce: That all that portion of the state of Idaho contained in the following boundaries, to-wit: Beginning at the middle of the channel of Snake river, opposite the mouth of the Clearwater river; thence due north along the western line of the state of Idaho, to the middle line of township thirty-seven north; thence due east to a point where said middle line of township thirty-seven north intersects the Big Potlach creek; thence up said creek northeasterly to a point where it intersects the middle line of township thirty-eight north; thence east along the middle line of township thirty-eight north, to where it intersects the west boundary line of Shoshone county; thence south along the west line of Shoshone county to Clearwater river; thence up the South fork of the Clearwater river to Lolo creek; thence with Lolo creek in an easterly direction to the north line of Idaho county; thence along said north line of Idaho county to the mouth of Salmon river, and the center of the channel of Snake river; thence down the center of Snake river to the place of beginning, shall comprise the county of Nez Perce, and the county seat of said county is hereby located at Lewiston.

Act creating county approved February 4, 1864, 1st Ses. p. 628.

Portion cut off and made part of new county called Lah-tah by act approved December 22, 1864, 2d Ses. p. 432.

Lah-tah county abolished and boundaries of Nez Perce defined by act approved January 9, 1867, 4th Ses. p. 126.

Portion cut off reducing county to present boundaries on south and east by act defining boundaries of Idaho county, approved January 21, 1885, 13th Ses. p. 126.

Latah county created from northern portion of Nez Perce by act of congress, approved May 14, 1888.

By act of congress, Nez Perce county was divided and Latah county was created. By Section 7 of said act, it was provided that Latah county should be and remain a part of Nez Perce county for judicial purposes until the next meeting of the judges of the supreme court of the territory of Idaho, when terms of court were to be fixed for Latah county. By Sec. 5 of said act, Latah county was to pay to Nez Perce county her just proportion of the net indebtedness of the judicial expenses of the county of Nez Perce until December 31, 1888.—Nez Perce County v. Latah County, 2 Idaho, 1131, 31 Pac. 800.

Section 1561. Oncida: That all that portion of the state of Idaho included within the following boundaries, to-wit: Commenc-

ing at the point where the meridian of longitude one hundred and thirteen degrees west from Greenwich, intersects with the northern boundary of Utah, and running from thence north along said meridian to Snake river, thence up said river in an easterly direction to the mouth of Port-Neuf river; thence up Port-Neuf to what is known as the point of the mountain, about four miles northwest of Pocatello; thence southerly in a straight line to the top of the range; thence along the crest of the mountains between Malad and Marsh valleys to a point on top of the range, due west of a point one mile south of the present southern boundary of the town site of Oxford; thence due east to Bear Lake county line; thence in a southerly direction along the western line of Bear Lake county to the southern line of Idaho; thence west along said southern line of Idaho to the place of beginning, is hereby created into the county of Oneida and the county seat of said county is hereby located at Malad City.

County created January 22, 1864, 1st
Ses. p. 625.

Portion cut off in creating Bear Lake

county, January 5, 1875, 8th Ses. p. 720.

Portion cut off in creating Bingham

county, January 13, 1885, 13th Ses. p. 41.

Section 1562. Owyhee: All that portion of the state of Idaho included within the following boundaries, to-wit: Begining on Snake river at the mouth of the Owyhee, and running due south along the eastern boundary line of the state of Oregon, to the northern boundary of the state of Nevada; thence east along the northern boundary of the state of Nevada and the state of Utah, to the thirty-eighth meridian of longitude west from Washington thence north with said meridian to Snake river; thence down the channel of Snake river in a westerly direction to the mouth of the Owyhee, the place of beginning; be and the same is hereby organized into the county of Owyhee, and the county seat of said county is hereby located at Silver City.

County created December 31, 1863, 1st
Ses. p. 624.

Act locating county seat at Silver
City, approved January 2, 1867.

Boundaries re-defined February 4,
1864, 1st Ses. p. 628.

Cassia county created from portion of
by act approved January 20, 1879, 10th
Ses. p. 43.

Section 1563. Shoshone: All that portion of the state of Idaho contained in the following boundaries, to-wit: Beginning at the mouth of the south fork of Clearwater; thence up said south fork of Clearwater to the Lola fork; thence with the Lola fork in an easterly direction to the summit of the Bitter Root mountains; thence in a northerly direction with said range of mountains until said range turns in a westerly direction and is called Coeur d'Alene; thence with said Coeur d'Alene range of mountains in a westerly direction until a point is attained from which running a line due south will strike the mouth of the south fork of Clearwater; thence to the place of beginning, be and the same is hereby organized into the county of Shoshone, and the county seat of said county is hereby located at Wallace.

County created February 4, 1864, 1st
Ses. p. 628.

Provision made for survey of portion
of southern boundary by act approved
March 2, 1891, 1st Ses. p. 117.

Section 1564. Washington: That all that portion of the state of Idaho included within the following lines, to-wit: Commencing at a point on Snake river where the second standard parallel, U. S. survey, intersects the same; thence east along said line to where said line intersects the line dividing Boise and Canyon counties; thence northerly upon said boundary line to the summit dividing the waters of the Payette and Weiser rivers; thence along said divide in a northerly direction to a point on said divide, known as Bigrock flat, where the waters flow into Little Salmon; thence in a northeasterly direction on a low divide separating the waters of the Little Salmon and Payette rivers to a point due east of the northern point of Little Salmon meadows; thence west to the Little Salmon river; thence down the Little Salmon river to a point due east of the point where the section line between sections six and seven of township twenty-two north, range one east, Boise meridian, intersects said meridian; thence due west to the middle of the main channel of Snake river; thence up said channel to the place of beginning, be, and the same is hereby organized into the county of Washington, and the county seat of said county is hereby declared to be at Weiser.

County created from portions of Ada and Idaho counties by act approved February 20, 1879, 10th Ses. p. 40.

Act to better define boundaries ap-

proved February 11, 1891, 1st Ses. p. 41.

Act to better define boundaries approved February 23, 1895, 3d Ses. p. 21.

Re-enacted and approved February 2, 1899, 5th Ses. p. 22.

CHAPTER LXII.

COUNTIES AS BODIES CORPORATE.

Section.

1565. Every county a body corporate.

1566. Powers, how exercised.

1567. Corporate name and designation.

1568. Examination of powers.

Section.

1569. County must not loan or give its credit.

1570. Judgment against county how paid.

Section 1565. Every County a Body Corporate:

Every county is a body politic and corporate, and as such has the powers specified in this title or in other statutes, and such powers as are necessarily implied from those expressed.

1887 R. S. Sec. 1730; Compiled Laws 1875, p. 754; 1871, 6th Ses. p. 76.

CORPORATE CAPACITY: A county is not a municipal corporation in the full sense of the term. It is only a quasi corporation, and possesses such powers and is subjected to such liabilities only as are specially provided for by law.—*Schweiss v. First Judicial Dist.* 23 Nev. 226, 34 L. R. A. 602, 45 Pac. 289; can sue and be sued.—*Price v. County of Sacramento*, 6 Cal. 255. A county is one of the political divisions of a state, and is clothed with certain political powers of government of its local affairs.—*Emery County v. Burren* (Utah), 47 Pac. 91. Counties so far as they are to be regarded as corporations at all, are political corporations.—*People v. McFadden*, 81 Cal. 483,

15 Am. St. Rep. 66, 22 Pac. 851; *People v. Sacramento County*, 45 Cal. 692.

CREATION AND DIVISION OF COUNTIES: The legislature has power to create new counties, and may authorize the governor to appoint county officers therefor, to serve until the election of county officers at the first biennial election held thereafter, and until such officers so elected, qualify as by law required.—*Sabin v. Curtis*, County Treasurer (Idaho), 32 Pac. 1130. The fact that an act creating a new county contains provisions for the appointment of officers in an unauthorized manner, does not invalidate other parts of the act.—*Frost v. Pfeiffer* (Colo.), 58 Pac. 147.

DIVISION OF COUNTIES: An act to divide a county and attach the part

cut off to another county that does not provide for submitting the question to a vote of the people in the segregated territory is unconstitutional.—*People v. George*, 2 Idaho, 813, 26 Pac. 983; but this does not restrict the power of the legislature to create new counties from territory previously embraced within one or more existing counties.—*Frost v. Pfeiffer*, *supra*.

CREATION OF DEBT: A newly organized county can create a valid debt and issue warrants therefor prior to the assessment of taxation in order to meet ordinary county expenses.—*Board of Com'rs of Roger Mills County v. Rowden* (Okl.), 58 Pac. 624.

EXISTING INDEBTEDNESS, DIVISION OF, AND RESPONSIBILITY FOR: A new county was organized out of the territory included in an existing county, the organization act providing that the debt of the old county should be ascertained and apportioned by the district court at its next regular term after the organization of the new county. The new county is liable for its part of the debts of the old county, as provided in the act creating such new county, and must pay the same when ascertained. — *Bingham County v. Bannock County* (Idaho), 51 Pac. 769.

APPORTIONMENT BY COUNTY COMMISSIONER: When a county is divided by act of the legislature and said act contains a provision that the board of commissioners of the county

so created shall apportion a debt that may exist, to ascertain what portion each shall pay, it is a perpetual continuing duty, incumbent upon the commissioners then in office and their successors until it is performed, and that a right of action does not abate by reason of the persons holding the office of commissioners refusing or neglecting to perform such duty during their term.—*Elmore County et al. v. Alturas County* (Idaho), 37 Pac. 349. When boards of county commissioners have made adjustment and settlement of matters growing out of the organization of a new county, such adjustment will not be disturbed in the absence of fraud or mistakes.—*Canyon County v. Ada County* (Idaho), 51 Pac. 748.

APPORTIONMENT BY ACCOUNTANTS: A board of accountants whose appointment is provided by law, and whose duty it is to ascertain the amount of indebtedness of a certain county at a certain time, and apportion the said indebtedness among said and other named counties, on a given basis, performs clerical acts, and such board of accountants cannot defeat the object for which it was appointed by attempting to pass, directly or indirectly, on the validity of such indebtedness. — *Blaine County v. Smita* (Idaho), 48 Pac. 286. Such accountants are not vested with either legislative or judicial functions, but perform mere clerical duties.—*Blaine County v. Lincoln County* (Idaho), 52 Pac. 165.

Section 1566. Powers, How Exercised: Its powers can only be exercised by the board of county commissioners, or by agents and officers acting under their authority, or authority of law.

1887 R. S. Sec. 1731.

Board of county commissioners: See next chapter.

Section 1567. Corporate Name and Designation: The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties.

1887 R. S. Sec. 1732.

Section 1568. Enumeration of Powers: It has power

1. To sue and be sued;
2. To purchase and hold lands within its limits;
3. To make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers;
4. To make such orders for the disposition or use of its property as the interests of its inhabitants require;
5. To levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by law.

1887 R. S. Sec. 1733; *Compiled Laws 1875*, p. 754.

SUITS BY AND AGAINST COUNTIES: An action for the benefit of a county and where the demand sued upon is the property of the county, must be in the corporate name of the county.—*United States v. Shoup*, 2 Idaho, 459; 21 Pac. 656.

A county cannot be made a party, in appeal from an order of the board of county commissioners. It can only be proceeded against by an action under the provisions of the statute which authorizes suits against the county, and on the trial of such an appeal, a money judgment cannot be rendered against the county.—*Gorman v. Commissioners of Boise County et al.* 1 Idaho, 627.

A county sued by bona fide holder of a warrant for value thereof, may set up any defense to which it was subject in the hands of the original payee. *Crawford v. Board of Comm'rs of Noble County (Okla.)*, 58 Pac. 616.

No suit can be maintained against a county as such in the absence of a statute authorizing counties to be sued.—*Taylor v. County Court of Salt Lake County*, 2 Utah, 405. The right to sue is a power incident to the creation of a county by the legislature.—Id.

LIMITATIONS ON INDEBTEDNESS: All county indebtedness incurred in any one year, except for the ordinary and necessary expenses of such county, must not exceed the income and revenue for such year without the question is submitted to a vote of the people.—*Constitution of Idaho*, Sec. 3, Art. VIII; *Bannock County v. C. Bunting & Co. (Idaho)*, 37 Pac. 277; *Morgan v. Commissioners*, supra; *Theiss v. Hunter (Idaho)*, 45 Pac. 2; *Ball v. Bannock County (Idaho)*, 51 Pac. 454; *Fenton v. Blair (Utah)*, 39 Pac. 485.

Section 1569. County Must Not Loan or Give Its Credit: No county must in any manner loan or give its credit to or in aid of any person, association, or corporation.

1887 R. S. Sec. 1734; last clause of original section stricken out to comply with constitutional prohibition, Art. VIII, Sec. 4.

Section 1570. Judgment Against County, How Paid: Upon presentation to the board of county commissioners of a final judgment for money or damages, duly certified, against their county, the board must allow the same and direct its payment as other claims against the county are paid.

1887 R. S. Sec. 1735; *Compiled Laws 1875*, p. 754; 1871, 6th Ses. p. 77.

See Sec. 1613.

JUDGMENT, HOW ENFORCED: No execution can issue upon a judgment against a county, and property of a county is not subject to execution and sale; but when a judgment is obtained against a county, it is made the duty of the county to allow and pay

the claim, the claim being no longer open to contest; and it is the duty of the county commissioners to apply such funds in the treasury, as are not otherwise appropriated, in payment of the claim, or if there are no funds, to levy a tax for the same.—*Emery County v. Burrenson (Utah)*, 47 Pac. 91; *Alden v. Alameda County*, 43 Cal. 270.

CHAPTER LXIII.

THE BOARD OF COUNTY COMMISSIONERS.

Section.

- 1571. Number of members.
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- 1573. Term of office.
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- 1580. Regular meetings of the board.
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Section.

- 1582. Special meetings.
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- 1591. Claims for bounty.
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- 1593. Special tax to create fund.
- 1594. Certain bounty provisions not to apply.
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- 1596. Taxpayers may petition for new buildings.
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- 1616. Application for franchise, transferred to court, when.
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- 1619. Annual statement by board.
- 1620. Fire guard.
- 1621. Powers of fire guard.
- 1622. Enforcing payment for repairs, etc.
- 1623. Camp fires, notice.
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Section 1571. Number of Members: Each county must have a board of county commissioners consisting of three members.

1887 R. S. Sec. 1745; Compiled Laws 1875, p. 520.

Boards of county commissioners are entireties and can only act collectively and as empowered by law.—Rankin v. Jauman (Idaho), 39 Pac. 1111; Conger v. Commissioners (Idaho), 48 Pac. 1064.

It was suggested by the court in *Commissioners v. Mayhew* (Idaho), 51 Pac. 411, that the board of commissioners of a county was not a corporation and had no authority to sue by its common name.

Section 1572. Qualifications: Each member of the board of commissioners must be an elector of the district he represents.

1887 R. S. Sec. 1746; 1885, 13th Ses. p. 85, portion of Sec. 3.

Elector, who is: Const. Art. VI, Sec. 2; see also Sec. 786 of this Code.

Section 1573. Term of Office: The term of office of a commissioner is two years.

1887 R. S. Sec. 1747; Compiled Laws 1875, p. 521, Sec. 2; see also Const. Art. XVIII, Sec. 10.

Section 1574. County Commissioners Districts: At the regular meeting in July, preceding any general election, the board of commissioners must district their county into three districts, as nearly equal in population as may be, to be known as county commissioners' districts, numbers 1, 2 and 3 respectively; but in making such districts, no voting precincts shall be divided: Provided, that when a new county shall have been created, or the boundary lines of a county shall have been changed, then the board of commissioners of such counties may district their county at any general or special meeting of such board.

1899, 5th Ses. p. 164; 1893, 2d Ses. p. 3, amending laws of 1887, R. S. Sec. 1748, 1885, 13th Ses. p. 85.

Election of commissioners: Sec. 771. Filling vacancies: Secs. 912, 1045.

WHO ENTITLED TO VOTE: Counties must be divided into commission-

ers' districts, but the electors of the whole county are entitled to vote for one county commissioner for each district, and such vote must be abstracted as provided for the vote of other county officers. — *Cunningham v. George*, 2 Idaho, 1196, 31 Pac. 809.

Section 1575. Commissioners Must Elect Chairman:

The members of the board of commissioners must, at their first regular meeting on the second Monday of January next after their election, elect a chairman from their number.

1887 R. S. Sec. 1750; 1885, 13th Ses. p. 1875, p. 521, Secs. 5 and 6.
57, portion of Sec. 4; Compiled Laws

Section 1576. Quorum. Any Member May Admin-

ister Oaths: A majority of the board constitutes a quorum. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must, by an order, select one of their number to act as chairman temporarily. Any member of the board or its clerk may administer oaths to any person concerning any matter submitted to them or connected with their powers or duties.

1887 R. S. Sec. 1751; compiled from Compiled Laws 1875, p. 521, 530.

Section 1577. Auditor is Clerk of the Board: The county auditor is ex-officio clerk of the board of commissioners. The records must be signed by the chairman and the clerk.

1887 R. S. Sec. 1752; Compiled Laws 1875, p. 522, Sec. 9.

Section 1578. Duties of Clerk: The clerk of the board must:

1. Record all the proceedings of the board;
2. Make full entries of all their resolutions and decisions on all questions concerning the raising of money for, and the allowance of accounts against the county;
3. Record the vote of each member on any question upon which there is a division, or at the request of any member present;
4. Sign all orders made and warrants issued by order of the board for the payment of money;
5. Record the reports of the county treasurer of the receipts and disbursements of the county;
6. Preserve and file all accounts acted upon by the board;
7. Preserve and file all petitions and applications for franchises; and record the action of the board thereon;
8. Record all orders levying taxes; and,
9. Perform all other duties required by law or any rule or order of the board.

1887 R. S. Sec. 1753.

Section 1579. Records to be Kept by the Board: The board must cause to be kept:

1. A "minute book" in which must be recorded all orders and decisions made by them, and the daily proceedings had at all regular and special meetings;
2. An "allowance book" in which must be recorded all orders for the allowance of money from the county treasury, to whom made, and on what account, dating, numbering and indexing the same through each year;
3. A "road book," containing all proceedings and adjudications

relating to the establishment, maintenance, change, and discontinuance of roads, road districts, and overseers thereof, their reports and accounts;

4. A "franchise book," containing all franchises granted by them, for what purpose, the length of time and to whom granted, the amount of bond and license tax required;

5. A "warrant book," to be kept by the county auditor, in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book, with the date, amount, on what account, and name of payee.

1887 R. S. Sec. 1754.

RECORD MUST SHOW PROCEEDINGS HAD: The board of county commissioners is required by law to keep a record of its proceedings, and no presumption arises as to the regularity of

any of their proceedings not appearing of record, even though parties may have acted upon the supposed order of such board.—Gorman v. Comm'rs of Boise County et al. 1 Idaho, 553.

Section 1580. Regular Meetings of Board: The regular meetings of the boards of commissioners must be held at their respective county seats on the second Mondays in January, April, July, and October of each year, and must continue from time to time until all the business before them is disposed of. Such other meetings must be held, to canvass election returns, equalize taxation, and other purposes, as are prescribed by law or provided for by the board.

1887 R. S. Sec. 1755; 1883, 12th Ses. p. Sec. 879.

10; Compiled Laws, 1875, p. 521.

Meeting to equalize taxes: Sec. 1372

Meeting to canvass election returns: et seq.

Section 1581. Adjourned Meetings: Adjourned meetings may be provided for, fixed, and held for the transaction of business by an order duly entered of record, in which must be specified the character of business to be transacted at such meetings, and none other than that specified must be transacted.

1887 R. S. Sec. 1756; Compiled Laws 1875, p. 521, Sec. 8.

Section 1582. Special Meetings: If at any time after the adjournment of a regular meeting the business of the county requires a meeting of the board, a special meeting may be ordered by a majority of the board.

The order must be entered of record, and five days' notice thereof must, by the clerk, be given to each member not joining in the order. The order must specify the business to be transacted and none other than that specified must be transacted at such special meeting.

1887 R. S. Sec. 1757; Compiled Laws 1875, p. 521, Sec. 8.

Section 1583. Notice of Meetings: The clerk of the board must give five days public notice of all special or adjourned meetings, stating the business to be transacted, by posting three notices in conspicuous places, one of which shall be at the court house door.

1887 R. S. last part of Sec. 1758; Compiled Laws, 1875, p. 522, latter portion of Sec. 8.

NOTICE OF SPECIAL MEETING: If a notice is issued and the members of the board appear without being

served therewith, no one can object to the regularity of the meeting.—Tom- baugh v. Grogg (Ind.), 44 N. E. 994. It is presumed that notice of a special meeting was properly given: proof of the fact need not be recorded unless

the statute so requires.—Board of Supervisors v. Judges (Mich.), 64 N. W. 42. A special meeting called without observing the statutory requirements is not legal.—Goedgen v. Supervisors, 2 Biss. 328.

COMPULSORY MEETING: If the board neglects to perform a duty required of it at its regular meeting, it may be compelled by mandamus to meet again and perform it.—People v. Supervisors, 8 N. Y. 317.

Section 1584. Meetings and Records Public: All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection, free of charge.

1887 R. S. first part of Sec. 1758; 6 and 10.
Compiled Laws 1875, pp. 521, 522, Secs.

Section 1585. General Powers of Board: The boards of commissioners in their respective counties, have jurisdiction and power, under such limitations and restrictions as are prescribed by law.

1. To supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safe keeping, management, or disbursement of the public moneys and revenues; see that they faithfully perform their duties; direct prosecution for delinquencies; approve the official bonds of county and precinct officers, and when necessary, require the mto renew their official bonds, to make reports, and to present their books and accounts for inspection;

2. To divide the counties into precincts, school, road and other d istricts required by law, change the same and create others, as convenience requires;

3. To establish, abolish, and change election precincts, and to appoint judges of elections and canvass all election returns

4. To lay out, maintain, control, and mange public roads, turnpikes, ferries, and bridges within the county, and levy such tax therefor as authorized by law;

5. To provide for the care and maintenance of the indigent sick, or the otherwise dependent poor of the county; erect, officer, and maintain hospitals therefor, or otherwise provide for the same; and to levy the necessary tax therefor, per capita, not exceeding two dollars, and an ad valorem tax not exceeding one-fourth of one per cent., or either of such levies, when both are not required, on all persons subject to poll tax in the county and taxable property of the county;

6. To provide a farm in connection with the county hospital, and make regulations for working the same, or for the maintenance of the inmates under a lease of the same;

7. To purchase, receive by donation, or lease any real or personal property necessary for the use of the county; preserve, take care of, manage, and control the county property; but no purchase of real property must be made unless the value of the same has been previously estimated by three disinterested citizens of the county, appointed by them for that purpose, and no more than the appraised value must be paid therefor.

8. To sell at public auction at the court house door, after thirty days previous notice given by publication in a newspaper of the county, or posted in five public places of the county, and convey to the highest bidder, for cash, any property, real or personal, belonging to the county, not necessary for its use, paying the proceeds into the county treasury for the use of the county;

9. To examine and audit the accounts of all officers having the care, management, collection, or disbursement of moneys, belonging to the county, or appropriated by law, or otherwise, for its use and benefit;

10. To examine settle and allow all accounts legally chargeable against the county, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same;

11. To levy such tax annually on the taxable property of the county as may be necessary to defray the current expenses thereof, including salaries otherwise unprovided for, not exceeding the amount authorized by law; and to levy such taxes as are required to be levied by special or local statutes;

12. To equalize the assessments;

13. To direct and control the prosecution and defense of all suits to which the county is a party in interest, and employ counsel to conduct the same, with or without the prosecuting attorney as they may direct;

14. To insure the county buildings in the name of and for the benefit of the county;

15. To grant licenses and franchises, as provided by law, for constructing, keeping, and taking tolls on roads, bridges and ferries, and fix the tolls and licenses;

16. To fix the compensation of all county officers not otherwise by general or special law fixed, and provide for the payment of the same;

17. To fill by appointment all vacancies that may occur in county or precinct offices, except the office of county commissioner;

18. To contract for the county printing, and provide books and stationery for county officers;

19. At the adjournment of each session of the board to cause to be published such brief statement as will clearly give notice to the public of all its acts and proceedings, and, semi-annually a statement of the financial condition of the county. Such statement, as well as all other public notices of proceedings of, or to be had before, the board, not otherwise specially provided for, must be published in some newspaper, printed and published in the county, as will be most likely to give notice thereof; and, when in a weekly paper, it must be published in at least two issues thereof, or in at least five issues when the paper is published oftener than weekly; but when there is no newspaper published in the county, copies of such statement must be kept posted for at least twenty days in three public places in the county, one being in a conspicuous place at the court house door.

20. To make and enforce such rules and regulations for the govern-

ment of their body, the preservation of order and the transaction of business as may be necessary;

21. To adopt a seal for their board;

22. To do and perform all other acts and things required by law not in this title enumerated, or which may be necessary to the full discharge of the duties of the chief executive authority of the county government;

1887 R. S. Sec. 1759, Sub. 19, being an amendment from laws of 1899, 5th Ses. p. 248, Sec. 1; 1895, 3d Ses. p. 50, Sec. 1. Last part of sub-division 3 omitted, to conform to Sec. 879.

Creation of voting precincts: Secs. 801, 802.

Creation of school districts: Sec. 1055 et seq.

Creation of road districts: Secs. 1145, 1147.

Appointing judges of elections: Sec. 831.

Canvassing election returns: Secs. 777, 879.

Duties respecting roads, bridges and ferries: Title VI.

Levying road taxes: Sec. 1168.

County poor: Chap. LXIX.

Levy of taxes: Chap. LII.

Equalizing assessments: Sec. 1055 et seq.

Granting licenses: Chap. LVIII.

Fixing compensation of county officers: Sec. 1764.

Vacancies in office: Chap. XXIX.

Duties respecting irrigation: Civil Code, Sec. 2608 et seq.

JURISDICTION: Boards of county commissioners are created by statute with limited jurisdiction, and only quasi judicial powers, and cannot act, except in strict accordance with the statutes.—*Gorman v. Commissioners of Boise County et al.* 1 Idaho, 553. They are not clothed with judicial functions, nor authorized to pass upon the validity of a statute; and have no authority or power to refund taxes that have been paid, whether the tax was illegal or not.—*Howell v. Board of Comm'rs of Ada County (Idaho)*, 53 Pac. 542; *People v. Solomon*, 54 Ill. 39.

An order allowing a county officer a compensation to which he is not entitled by law made by a board, is void for want of jurisdiction, and may be attacked collaterally.—*Fremont County v. Brandon (Idaho)*, 56 Pac. 264. The board has no authority to devolve upon an appointee of their own the duties and functions which the law has already affixed to another office.—*Meller v. Board of Commissioners of Logan County et al. (Idaho)*, 35 Pac. 712.

Contracts made by public officers, as county commissioners of a county, obtain validity only by force of the law authorizing their making, and persons

contracting with such officers are charged with knowledge of their lawful power and the extent of their authority. One contracting with county commissioners is charged with knowledge of the limits of their authority.—*Lebeher v. Board of Commissioners*, 3 Mont. 315, 23 Pac. 715.

OFFICIAL BONDS: It is the duty of the board of county commissioners to approve the bonds of the county officers pro forma, if upon their face they are prima facie good. The board may at any time afterwards, cite the sureties to make a further justification, and, in case it is deemed insufficient, may cite the officer to show cause why his office should not be declared vacant; but the board has no authority or power to pass upon malfeasance or misfeasance of an officer; these questions belong to a higher tribunal having jurisdiction to punish an officer, if found guilty.—*Gorman v. Commissioners of Boise County et al.* 1 Idaho, 553.

PURCHASE OF REAL ESTATE: A board of county commissioners can, under the constitution and laws of Idaho, purchase real estate necessary for the use of the county, without submitting the question of making such purchase to the voters, when they can do so out of the revenue for the year and not encroach on such part of said fund as is required to pay the indebtedness created during the year for ordinary and necessary expenses.—*Ball v. Bannock County et al. (Idaho)*, 51 Pac. 454; but a warrant issued for purchase of court house site at an expense of four thousand dollars incurred an indebtedness above the revenue of the current year, and was not an ordinary and necessary expense, and was issued in violation of the constitutional provision, Sec. 3, Article VIII.—*Bannock County v. C. Bunting & Co. (Idaho)*, 37 Pac. 277.

COUNTY PRINTING: It is the duty of the board of county commissioners to contract for the printing of the delinquent tax list; and the authority to fix the compensation for publishing such delinquent tax list, by contract or otherwise, is vested solely in the board of commissioners.—*Jolly v. Latah County (Idaho)*, 48 Pac. 1063.

VOID CONTRACTS: Services rendered under a void contract with a

board of county commissioners cannot be recovered for, in an action upon quantum meruit.—*Hampton v. Board of Comm'rs Logan County (Idaho)*, 43 Pac. 324; but where a county was engaged in litigation, and the necessity for the present payment of a small amount arose, and a member of the board of commissioners for the county advanced the required sum, the allowance of the sum so advanced by the board will not be reversed on appeal.—*Osborn v. Ravenscraft et al. (Idaho)*, 51 Pac. 618.

TO EXAMINE AND SETTLE ACCOUNTS: The word "account" refers only to demands arising out of some express or implied contract, or some board can allow.—*Kellogg v. Supervisors*, 42 Wis. 97.

A claim to have taxes on land refunded on the ground that they were illegal and excessive, through fault of the assessor, is not such a claim as the board can allow.—*Id.*; *Kellogg v. Supervisors*, 42 Wis. 97.

It has been held that mandamus will lie to compel the board to consider a claim.—*People v. Supervisors*, 3 Mich. 475.

POWER TO EMPLOY COUNSEL: Under the constitution and laws of Idaho, boards of commissioners of the several counties are empowered to employ counsel in all litigation in which their county is a party in interest; and in making such employment it is not obligatory upon them to consult the district attorney. This case comes within the rule laid down by the supreme court in *Ravenscraft v. Board (Idaho)*, 47 Pac. 942; *Anderson v. Shoshone*

County (Idaho), 53 Pac. 105; but before a board can employ counsel, as provided in the constitution and in the statutes, the necessity therefor must be apparent, and their action in making such appointment is reviewable by the courts.—*Meller v. Board of Com'rs of Logan County et al. (Idaho)*, 35 Pac. 712; *Ravenscraft et al. v. Board of Comm'rs*, supra; in employment of counsel by county commissioners under Const. Art. XVIII, Sec. 6, in order to bind the county they must act as a board, and their action therein must be made a matter of record.—*Conger v. Board of Comm'rs Latah County (Idaho)*, 48 Pac. 1064.

And on an appeal from the action of the board in employing counsel to represent the county in litigation instituted on behalf of the county, no abuse of discretion by the board appearing, their action will not be disturbed.—*Anderson v. Shoshone County*, supra; but under the provisions of the statute and of Sec. 6, Art. XVIII of the state constitution, county commissioners are not authorized to employ counsel in criminal cases.—*Conger v. Board of Com'rs of Latah Co. (Idaho)*, 48 Pac. 1064; and in *Meller v. Board of Com'rs (Idaho)*, 35 Pac. 712, and *Hampton v. Board of Com'rs (Idaho)*, 43 Pac. 324, the court held that the appointment of one to be and act as the legal adviser of the board for a period of two years and a contract by the board with such appointee, defining his duties and fixing his compensation, is the creation of a county office, and is prohibited by the constitution of this state.

Section 1586. Bounties for Wild Animals: The board of county commissioners of each county shall, upon a petition of one-fourth of the qualified voters who are tax payers of the county fix and determine the bounty, for the destruction of each coyote, wild-cat, fox, lynx, bear, squirrel, rabbit, gopher, musk-rat, panther, cougar, lion, nondescript and badger, and prescribe rules for making proof of such destruction and obtaining such bounty; Provided, That in no case shall the bounty for rabbits, gophers or squirrels be more than five cents for each animal destroyed.

1899, 5th Ses. p. 20; 1893, 2d Ses. p. 65, amending laws of 1887 R. S. Sec. 1760.

Section 1587. Tax to Pay Bounty: In order to pay bounties provided for in the preceding section, the board of county commissioners of any county in which a bounty for any or all the animals therein mentioned has been offered, are hereby authorized and required to levy and cause to be collected a special tax of not more than one-half of one per cent. on all taxable property in said county. Said levy shall be made at the same time that other taxes

are levied, and collected as other taxes are collected, and when so collected shall be paid into the county treasury and then become a special fund to be known as the scalp fund.

1887 R. S. Sec. 1760a.

Section 1588. Proof Required to Obtain Bounty:

Any person desirous of obtaining any bounty offered for the destruction of any animals mentioned in section 1586, shall present to the board of county commissioners a verified statement showing the number and kind of animals destroyed by the person seeking the bounty and that the animals destroyed by him were killed in the county in which application for bounty is made. And such person shall also be required to furnish to the board of county commissioners the scalps or ears of the animals destroyed; Provided, Any party residing over ten miles from the county seat may make affidavit before any one authorized to administer oaths in said county, and said commissioners shall allow such claim when accompanied with the scalps from said animals. Said scalps and ears shall be immediately destroyed in the presence of the county commissioners.

1887 R. S. Sec. 1760b.

Section 1589. Transfer of Surplus Scalp Fund: The county commissioners of any county in which a scalp fund shall have been established, may at the end of any quarter when there is a deficiency in the current expense fund of said county and a surplus in the scalp fund in excess of one hundred dollars, transfer all of such surplus exceeding one hundred dollars to the current expense fund, after the warrants previously drawn on such scalp fund shall have been paid, and whenever there shall occur a deficiency in the scalp fund the treasurer shall transfer from the current expense fund to the scalp fund a sufficient amount of money to supply the deficiency if not in excess of the amount previously transferred to the said current expense fund, and at the time due the scalp fund.

1887 R. S. Sec. 1760c.

Section 1590. Special Bounty Fund for Coyote, Lynx and Wild Cat: The board of county commissioners of each county in the state of Idaho must cause to be paid a bounty of one dollar and fifty cents each for each and every coyote, lynx or wild cat that shall be killed hereafter within the said county, the same to be paid from a special fund hereinafter provided, to be known as the bounty fund.

1901, 6th Ses. p. 205, Sec. 1.

Section 1591. Claims for Bounty: All claims for such bounty must be presented to the board of county commissioners of the county within which said coyote, lynx or wild cat was killed, as required by law for other claims against counties, which claim so presented must be accompanied by an affidavit stating the kind of animal, the time and place, where, and by whom said coyote, lynx, or wild cat was killed, and at the same time said party making such affidavit must deposit with the clerk of said board of county commissioners the ears

of such coyote, lynx or wild cat and so much of the pelt as shall be required by said board of county commissioners.

1901, 6th Ses. p. 205, Sec. 2.

Section 1592. Ears of Animal to be Destroyed After One Year: After the allowance of such claim for bounty, the said board of county commissioners shall cause the tips of said ears to be clipped, so as to prevent their being again presented, which shall then be deposited with the clerk of said board of county commissioners, who shall mark them so as to be identified with the name of the person presenting the same and date thereof, and shall be safely kept by him for a period of one year, when the said clerk shall destroy the same.

1901, 6th Ses. p. 205, Sec. 3.

Section 1593. Special Tax to Create Fund: For the purpose of paying such bounty, the county commissioners of each county shall annually levy a special tax of one per cent per head upon all sheep assessable within said county, which tax shall be assessed and collected at the same time and in the same manner as county and state taxes are assessed and collected.

The moneys so collected shall constitute a special fund to be known as "A county sheep bounty fund," which shall be used for no other purpose.

1901, 6th Ses. p. 206, Secs. 5 and 6.

Penalty for false affidavit: Penal Code Sec. 4685.

Section 1594. Certain Bounty Provisions Not to Apply: The provisions of sections 1586 to 1589 inclusive of this Code shall not apply to the preceding section nor to the fund created thereby, nor shall any part of said fund in any county be appropriated or expended except for the purposes and in the manner provided in sections 1590 to 1593 inclusive of said Code.

1901, 6th Ses. p. 206, Sec. 7.

Section 1595. County Buildings and Furnishings: The board must cause to be erected or furnished, a court house, jail and such other public buildings as may be necessary and must, when necessary, provide offices with necessary furniture for the sheriff, clerk of the district court and ex-officio auditor and recorder, county treasurer, prosecuting attorney, probate judge, and county superintendent of public instruction and must draw warrants in payment of the same; Provided, That the contract for the erection of any such building must be let after thirty days' notice for proposals to the lowest bidder, who will give security for the completion of any contract he may make respecting the same; and, Provided, further, No contract must be let under the provisions of this section when the expenses thereunder will exceed one thousand dollars. The board must also provide all necessary books of record for the county recorder and auditor, county treasurer, county assessor and tax collector, clerk of the district court, probate court, county superintendent of public instruction and the board and stationery for the use of the board

and so much as is necessary for the use of said county officers in the transaction of official business.

1887 R. S. Sec. 1761; 1881, 11th Ses. p. 247.

Section 1596. Tax Payers May Petition for New Buildings: When a petition signed by at least one third of the tax payers who are qualified voters of any county, is presented to the board at any regular meeting, asking that a court house, jail, or other public buildings or improvements be built for the use and benefit of the county, the cost of which will exceed one thousand dollars, the board must not act upon the said petition until the next regular meeting; and at least for four weeks before the next meeting, the clerk of the board must give notice by publication in a newspaper or otherwise, as ordered by the board, of presentation of said petition, and the nature and cost of said buildings, or improvements contemplated, and that the petition will be acted upon by the board, at their next regular meeting. If they deem the interest of the county demands it, the board must order the said improvements or buildings to be made or erected, and must thereupon advertise for sealed proposals for making said improvements or erecting said buildings. Such notice for sealed proposals must be given by the clerk, in a newspaper or otherwise, as ordered by the board, for at least thirty days, and must contain explicit specifications of the improvements or buildings to be made or erected, and state the day when said proposals will be opened. Proposals may be received until the opening of the session of the day they are to be opened, and they must be opened and considered publicly, and the contract let to the lowest responsible bidder, unless they all be rejected, which the board shall have power to do if they are too high; and the board may proceed to advertise again or let the same by private contract, provided it be for a sum less than that proposed by the lowest bidder. The person or persons awarded the contract must give a good and sufficient bond to be approved by the commissioners for the completion of the contract according to the specifications. The building or improvements may be paid for by warrants upon the proper fund, or by the levying of a special tax, not exceeding fifty cents on each one hundred dollars of assessable property, to be paid into a special fund for that purpose; against which warrants may be drawn in payment for buildings or other improvements constructed or made under the provisions of this section.

1887 R. S. Sec. 1762.

Andrews v. Board County Commissioners (Idaho), 63 Pac. 592.

CANNOT EXCEED REVENUE FOR THE YEAR: The building of a bridge is not an ordinary and necessary expense. County commissioners have no authority to contract for the building of a bridge, the cost of which will exceed \$1000, without a petition asking it, is presented to them, signed by at least one-third of the taxpaying voters of the county; and then, if the cost added to the other ordinary and neces-

sary expenses will exceed the county's revenue for the year, the commissioners cannot contract for such bridge without being authorized by a two-thirds vote at an election called and held for that purpose as provided by Section 3, Art. VIII of the constitution. The provisions of the constitution, relative to the creation of public debts are mandatory. Boards of commissioners in creating debts must keep within the provisions of the constitution, and, if they fail to comply with the requirements of the constitution, their acts are

void.—*Dunbar v. Board of Commissioners* (Idaho), 49 Pac. 409; see also *Ban-* *nock Co. v. C. Bunting & Co.* (Idaho), 37 Pac. 277.

Section 1597. Provide Appliances for Elections:

The board must provide or cause to be provided all poll lists, poll books, blank returns and certificates, proclamations of election and other appropriate and necessary appliances for holding all elections in the county, and allow reasonable charges therefor, and for the transmission and return of the same to the proper officers.

1887 R. S. Sec. 1763.

Section 1598. Clerk to Furnish List of Allowed Accounts:

The board must require their clerk at the close of every session to furnish them with a list of all bills and accounts of every nature, approved by them at said session giving the name of each person in whose favor an account or bill of any kind or nature has been allowed, with the amount allowed him and out of what fund the same is to be paid. They must compare their list with the record of their proceedings, and if not found correct, make it so and certify to said list and file it with the county treasurer, and the treasurer must pay no warrant drawn on any fund in the county treasury that does not correspond with the files furnished him by the board.

1887 R. S. Sec. 1766.

Section 1599. Board Must Not Divert Money, Inoperative Fund:

The board must not transfer any money from one fund to another, nor in any manner divert the money in any fund to other uses except in cases expressly provided and permitted by law, nor make any preferred creditor, nor cause any warrant to be drawn payable out of its order except on the order of the district court in cases provided by law, and the county treasurer must, in all things observe these instructions: Provided, That when any money shall have been assessed and collected in any of the counties of this state, and the same set apart as a separate fund, for a special purpose, and from any cause the said fund shall have become inoperative for the purpose for which said fund was created, it shall be lawful for the board of county commissioners, in such cases to transfer the money in said fund to such fund as the board of county commissioners may deem best.

1887 R. S. Sec. 1767.

All money in the county treasury at the end of each fiscal year, not needed

for current expenses shall be transferred to the redemption fund: Const. Art. VII, Sec. 15.

Section 1600. Requiring Attendance of Witnesses:

The board by its chairman, or the chairman of any committee, may issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within their jurisdiction.

1887 R. S. Sec. 1768.

Section 1601. Witness is Bound to Attend: A witness is bound to attend, when served, and to answer all questions which he would be bound to answer in the same case before a court of jus-

tice. Obedience to the subpoena, or to an order to attend, or to testify, may be enforced by the board, and for that purpose the board has all the powers conferred by, and the witness is subject to all the provisions of the Code of Civil Procedure.

1887 R. S. Sec. 1769.

Section 1602. Fees of Witnesses and Officers Not Prepaid: Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of commissioners, are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend the public funds, who has failed to make any statement or settlement of his accounts as required by law, or who has failed to account without their fees being prepaid. The board may allow them reasonable compensation for services and attendance.

1887 R. S. Sec. 1770.

Note.—The provisions of this section relating to fees of officers for

serving subpoenas are allowed to remain because constables are allowed fees.

Section 1603. When Board Must Not Allow Claims:

The board must not for any purpose contract debts or liabilities, except in pursuance of law. They must not allow any account, or cause or permit any warrant to be issued to any county or precinct officer entrusted with the collection, safe keeping or disbursement of the public funds, who has failed to make any statement or settlement of his accounts, as required by law, or who has failed to account for and pay over the public funds received by him when and as required by law, or who is in any way a delinquent or defaulter in his trust, nor to any delinquent tax payer. They must not allow any account, or cause or permit any warrant to be drawn in favor of any person who is liable, either as principal or surety, upon any official or other bond, cognizable by the board after a breach of such bond, or upon any recognizance in a criminal action, or proceeding in the county after the forfeiture of such recognizance. They must not provide any stationery for any officer, to be used for any purpose or act for which such officer is allowed a fee by law. They must not allow any account or claim of any officer while he neglects or refuses to perform any duty required of him by law.

1887 R. S. Sec. 1771.

Note.—That portion of the above section as enacted in 1887, which provided that the services of deputies should be paid "to and through and in the name of the principal" has been stricken out. The act of 1899, 5th Ses. p. 407, Sec. 4 (Sec. 1629 of this Code), provides that the remuneration of deputies "shall be paid quarterly in the same manner as the salaries of the county officers are paid."

COUNTY WARRANTS: An equitable action cannot be maintained to cancel county warrants alleged to have been illegally issued when there exists an adequate remedy at law, either affirmative or defensive.—County of Ada v. Bullen Bridge Co, et al. (Idaho),

47 Pac. 818. Such an adequate remedy exists under the laws of this state.—Id.: Ada County v. First National Bank (Idaho), 47 Pac. 1098.

A county sued by bona fide holder of warrant for value thereof may set up any defense to which it was subject in the hands of the original payee.—Crawford v. Board of Comm'rs of Noble County (Okl.), 58 Pac. 616.

County warrants are non-negotiable, and one who has purchased a county warrant in good faith, occupies no better position than the seller.—County of Ada v. Bullen Bridge Company (Idaho), 47 Pac. 818; Crawford v. Comm'rs (Okl.), 58 Pac. 616; Erskine v. Steele County, 4 N. D. 339, 28 L. R. A. 645, 60 N. W. 1050,

Section 1604. County Officers Must Not Advocate Claims: No county officer must, except for his own services, present any claim, account or demand for allowance against the county, or in any way advocate the relief asked on the claim or demand made by another. Any citizen and taxpayer of the county in which he resides may appear before the board and oppose the allowance of any claim or demand made against the county.

1887 R. S. Sec. 1772.

Section 1605. Only Duly Verified Claims Must be Considered: The board of commissioners must not hear or consider any claim in favor of an individual against the county unless an account properly made out, giving all items of the claim, duly verified as to its correctness, and that the amount claimed is justly due, is presented to the board within a year after the last item of the account accrued.

1887 R. S. Sec. 1773; Compiled from laws 1875, p. 528.

Section 1606. Account Must be Filed, When: No account must be necessarily passed upon by the board unless made out as prescribed in the preceding section and filed by the clerk at least one day prior to the session at which it is asked to be heard.

1887 R. S. Sec. 1774; compiled from laws 1875, p. 528.

WHEN FILED: This section is not to be construed as prohibiting the

board from acting upon accounts which are not filed before the first day of its meeting.—*Eaton v. Supervisors*, 40 Wis. 668.

Section 1607. Rejecting Claims. Allowing Part: When the board finds that any claim presented is not payable by the county or is not a proper county charge, it must be rejected; if they find it to be a proper county charge, but greater in amount than is justly due, the board may allow the claim in part and draw a warrant for the portion allowed, on the claimant filing a receipt in full for his account. If the claimant is unwilling to receive such amount in full payment, the claim may be again considered at the next regular succeeding session of the board, but not afterwards.

1887 R. S. Sec. 1775.

A party will not be permitted, if dissatisfied with a part allowance made by the board, to accept the same and sue for the balance. He must either forego the part rejected, or submit his claim as a whole to the courts. And the commissioners are not authorized

to order the issuance of a warrant to a party for a claim against the county, which they allow in part unless such party allows a receipt in full for such account.—*Eakin v. Nez Perce County* (Idaho), 36 Pac. 702; *Cline v. Bingham Co.* (Idaho), 60 Pac. 76; *Ellis v. Bingham Co.* (Idaho), 60 Pac. 79.

Section 1608. Appeals From Board: At any time within twenty days after the first publication or posting of the statement required by paragraph 19 of section 1585, an appeal may be taken from any act, order or proceeding of the board, by any person aggrieved thereby, or, by any taxpayer of the county when any demand is allowed against the county or when he deems any such act, order or proceeding illegal or prejudicial to the public interests; and no such act, order or proceeding whatever, which directly or indirectly renders the county liable for the payment of the sum of three hundred dollars or over, or its equivalent, shall be valid until

after the expiration of the time allowed for appeal or until such appeal, if taken, shall be finally determined; but there is excepted from the operation hereof all orders for the payment of those sums specially directed by law to be paid, or payments in fulfillment of acts or proceedings made and confirmed according to the provisions hereof.

1899, 5th Ses. p. 248; 1895, 3d Ses. p. 51, amending laws of 1887 R. S. Sec. 1776.

REMEDY BY APPEAL: When one desires to contest the validity of claims against a county, upon which warrants have been issued, there is a plain, speedy, and adequate remedy at law, by means of appeal from the order of the commissioners allowing such claims, and an action to restrain the treasurer from paying such warrants cannot be maintained.—*Picotte v. Watt*, 2 Idaho, 1154, 31 Pac. 805; *Meller v. Comm'rs* (Idaho, 35 Pac. 712; *Morgan v. Comm'rs* (Idaho), 39 Pac. 1118; *Jolly v. Woodworth* (Idaho), 42 Pac. 512; nor will a writ of review lie from the action of a board of county commissioners.—*Rogers v. Hayes* (Idaho), 32 Pac. 259.

PUBLICATION DOES NOT LIMIT TIME FOR APPEAL: A statement of the proceedings required to be published does not limit the time within which an appeal from an order of a board of county commissioners can be taken, unless the business of the session of such board has been completed, and the session finally adjourned.—*Ravenscraft et al. v. Board of Comm'rs Blaine County* (Idaho), 47 Pac. 942.

APPEAL NOT THE ONLY REMEDY: While all orders of the board of county commissioners are appealable under the above section, it is not the only remedy, the county may sue to recover money illegally paid by the county, or suit may be brought against the county.—*Ada County v. Gess* (Idaho), 43 Pac. 71.

Section 1609. Appeal, How Taken and Heard:

Such appeal may be taken to the district court, or the judge thereof, of the judicial district of which the county is a part, by serving upon the clerk of the board a notice of appeal so referring to the act, order or proceeding appealed from as to identify it; that upon notice in writing, of such appeal being brought by any person to the attention of such judge, he shall fix the earliest time and a place, convenient to himself, for the hearing of such appeal, which may be heard in a summary manner before him, or his court, and, when in his opinion, no serious injury will result from delay, the hearing shall be had during the next term of his court in the county from which the appeal comes. When the appeal is made for the purpose of protecting the interests of the county and of the people, no requirement shall be made of the appellant for security of costs, except that when the district judge shall be of opinion that such appeal is not made in good faith, but is for delay and vexation, he may require the appellant to enter into an undertaking with good sureties in an amount sufficient to secure the payment of costs, and in all other cases like undertaking shall be required.

1899, 5th Ses. p. 248; 1895, 3d Ses. p. 51, amending laws of 1887 R. S. Sec. 1777.

No undertaking on appeal from an order made by a board of county com-

missioners to the district court is required nor in such case on appeal from the district court to the supreme court.—*Ravenscraft v. Com-mrs* (Idaho), 47 Pac. 942.

Section 1610. Clerk Must Transmit Papers on Appeal: When such appeal is taken, the clerk of the board must within five days transmit to such district judge a copy of the notice of appeal, the order, decision or proceeding appealed from, together with the accounts, bills, contracts or papers connected therewith and necessary to a proper hearing thereof or, when this is not practicable, certified copies thereof and of the record.

1899, 5th Ses. p. 249; 1895, 3d Ses. p. 52, amending laws of 1887 R. S. Sec. 1778.

Section 1611. Decision of Court. Appeal to Supreme Court: Upon the appeal, the matter must be heard anew and the act, order or proceeding so appealed from may be affirmed, reversed or modified; and, from the decision of the district court, or judge, either party may, within five days, appeal to the supreme court. Either of said courts, or said judge, may make any rules necessary to a proper and speedy hearing in such appeals.

1899, 5th Ses. p. 249, first part of section; 1895; 3d Ses. p. 52, amending laws of 1887 R. S. Sec. 1779.

APPEAL TRIAL: On an appeal to the district court from an order of a board rejecting a claim against the county, a money judgment cannot be rendered, either against the board or the county. The order must be affirmed or reversed, and directions given to the board to allow it, or annulled, or modified, and sent back with directions to pass upon it as modified.—*Gorman v. Commissioners of Boise County*, 1 Idaho, 627. Upon the trial of such appeal, findings of fact should be made, unless waived, as provided in the Code of Civil Procedure.—*Reynolds v. Board, Etc.* (Idaho), 59 Pac. 730; on such trial all evidence pertinent to the issues should be received, and the court may submit the issues to a jury.—*Fisher v. Board, etc.* (Idaho), 39 Pac. 552. A

county cannot be made a party in appeal from an order of the board of commissioners. It can only be proceeded against by an action under the provisions of the statute, which authorizes suits against the county.—*Gorman v. Commissioners*, supra.

WRIT OF REVIEW: Writ of review does not lie from an action of a board of county commissioners. The statutes having provided a speedy and adequate remedy by appeal.—*Rogers v. Hayes et al. County Commissioners* (Idaho), 32 Pac. 259.

WILL NOT LIE WHEN: No appeal will lie from a judgement of the district court upon an appeal from the board of commissioners reviewing an assessment of taxes; the remedy in such cases being by writ of error.—*Van Camp v. Commissioners*, 2 Idaho, 33; 2 Pac. 721; *Rupert v. Commissioners*, 2 Idaho, 21, 2 Pac. 718.

Section 1612. Costs on Appeal: The costs shall be taxed against the losing party except when the appeal is taken in good faith to protect the interests of the county and the people they shall not be taxed against the appellant; and, if it clearly appears that the order or proceeding appealed from was made fraudulently or in reckless disregard of the interests of the county or people, they may be taxed against those commissioners personally who assented to such order or proceeding.

1899, 5th Ses. p. 249, last part of section; 1895, 3d Ses. p. 52, amending laws of 1887 R. S. Sec. 177.

Section 1613. Claimant may Sue. Costs: A Claimant dissatisfied with the rejection of his claim or demand, or with the amount allowed him on his account, may sue the county therefor at any time within six months after the final action of the board, but not afterward; and if in such action judgment is recovered for more than the board allowed, on presentation of the judgment the board must allow and pay the same, together with the costs adjudged; but if no more is recovered than the board allowed, the board must pay the claimant no more than was originally allowed.

1887 R. S. Sec. 1780. See Sec. 1570.

MAY SUE: Appeal from the action of the board of county commissioners is not the only remedy, suit may be brought by or against the county.—*Ada County v. Gess* (Idaho), 43 Pac. 71. In

such actions, the complaint must show that the claim has been presented to the commissioners and disallowed.—*Fenton v. Salt Lake County*, 3 Utah, 423, 4 Pac. 241.

REJECTION OF CLAIM: It was

held a rejection of a claim, where it was presented at a January session and referred to a committee with instructions to report thereon at the next

November meeting, though such claim was for a large amount, and its consideration involved intricate questions.—Hyde v. Supervisors, 43 Wis. 129.

Section 1614. Drawing and Presenting Warrants:

Warrants drawn by order of the commissioners on the county treasury for the current expense during each year, must specify the liability for which they are drawn, and when they accrued, and must be paid in the order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it must be registered, and thereafter paid in the order of its registration.

1887 R. S. Sec. 1781.

Section 1615. Board must not be Interested in Property Purchased:

No member of the board must be interested, directly or indirectly, in any property purchased for the use of the county, nor in any purchase or sale of property belonging to the county, nor in any contract made by the board or other person on behalf of the county, for the erection of public buildings, the opening or improvement of roads, or the building of bridges, or for other purposes.

1887 R. S. Sec. 1782.

DUTY OF BOARD RESPECTING CONTRACTS: The law will not permit one who acts in a fiduciary capacity to deal with himself in his individual capacity, whether acting as sole trustee or with a board of which he is a member, or with the directors of a corporation of which he is one.—San Diego v. San Diego & L. A. R. R. Co. 44 Cal. 106. Boards of supervisors are bound to the same measure of good faith toward the county which is required of an ordinary trustee toward his cestui or an agent toward his prin-

cipal.—Andrews v. Pratt, 44 Cal. 309; but a contract of district attorney with the board of supervisors for extra compensation was sustained.—Capital Gas co. v. Young, 109 Cal. 140, 41 Pac. 869. Yet it was held that a supervisor cannot contract with the county for additional services rendered.—Domingos v. Supervisors, 51 Cal. 608. It was held in Irwin v. Yuba Co. 119 Cal. 686, 52 Pac. 35, that a supervisor could not collect claim for services and expenses in attending an anti-debris convention as representative of the board.

Section 1616. Application for Franchise Transferred to Court, When:

Whenever an application is made to the board for an order, franchise, or license, relating to any toll road, bridge, ferry, or other subject over which the board has jurisdiction, in which a majority of the board are not disinterested, the application, by order of the board, must be transferred to the district court of the county; the clerk of the board must thereupon certify the application and all orders and papers relating thereto to the court to which the transfer is ordered; and thereafter the court to which the same is certified has full jurisdiction to hear and determine the application.

1887 R. S. Sec. 1783.

Section 1617. Leave of Absence to County Officers:

The board of commissioners may grant to any county officer of their respective county (except the probate judge of such county) leave of absence from their county and the state, for a period not exceeding ninety days, during which time the absence of such officer does not work forfeiture of his office; Provided, That before the granting of such leave of absence the officer (except county commissioners) must

appoint a deputy to perform the duties of his office, as by statute in such cases made and provided, and must present to, and file with, the board of commissioners of his county the written consent of each person liable on his official bond, that such leave of absence be granted; And provided further, That no leave of absence shall be granted to more than any one county commissioner at the same time.

1889, 15th Ses. p. 59, amending laws of 1887 R. S. Sec. 1785.

Section 1618. Commissioners' Claims must be Verified: All claims against the county presented by members of the board of commissioners for per diem and mileage, or other service rendered by them, must be verified as other claims, and must state that the service has been actually rendered.

1887 R. S. Sec. 1786.

Section 1619. Annual Statement by Board: The board of county commissioners of the several counties shall, at the April sessions of said boards, prepare from said auditor's statement and have spread upon their minutes a full statement of the financial condition of their respective counties for the preceding fiscal year, together with a concise description of all property owned by the county, with an approximate estimate of the value thereof. And the said board shall cause to be printed the said auditor's statement in full for the information of the public.

1901, 6th Ses. p. 296, Sec. 2.

Section 1620. Fire Guard: When a petition, signed by at least five of the tax payers residing in any town or village, is presented to the board asking that a committee be appointed for the purpose of inspecting chimneys, stove pipes, and fire places, the board at their first regular meeting must act upon such petition by appointing not less than three nor more than five tax payers of such town or village, who shall constitute a "fire guard" within such limits as may be designated by the commissioners.

1887 R. S. Sec. 1788; 1879, 10th Ses. p. 12.

Section 1621. Powers of Fire Guard: They are invested with the power to examine fire places, stove pipes, chimneys, and fire escapes in all public and private buildings within the limits designated by the commissioners, and may, when in their opinion there exists danger from fire in any building, give a notice in writing to the owner or occupant thereof, requiring him to repair, alter, or remove defective or insecure chimneys, fire places, stoves, or stove pipes, within a reasonable time; and upon his refusal or failure to comply with such written order, the board may have the same done at the expense of such owner or occupant.

1887 R. S. Sec. 1789; 1879, 10th Ses. p. 13.

Section 1622. Enforcing Payment for Repairs, Etc.: To enforce the payment of such alterations and repairs, the fire guard may seize so much of the personal property of any person liable and refusing or neglecting to pay for such alterations and repairs, as

will be sufficient to pay for the same and costs of seizure, which costs shall not exceed three dollars, and may sell the same at any time or place upon giving a verbal notice of one hour previous to such sale.

1887 R. S. Sec. 1790; 1879, 10th Ses. p. 13.

Section 1623. Camp Fires; Notice: It is the duty of the board of county commissioners of each county in this state, to cause to be erected in a conspicuous place at the side of each public highway, and at such places as they may deem proper, a notice in large letters, substantially as follows: "Camp fires must be totally extinguished before breaking camp, under penalty of not to exceed six months imprisonment or three hundred dollars fine, or both as provided by law.

(Signed.)
County Commissioners."

The erection and maintenance of such notices shall be at the expense of the respective counties, and at least ten in number of such notices shall be posted in each and every county in this state.

1887 R. S. Sec. 1792.

Section 1624. Commissioner, Neglect of Duty: Any commissioner who neglects or refuses to perform any duty imposed on him without just cause therefor, or who willfully violates any law provided for his government as such officer, or fraudulently or corruptly performs any duty imposed on him, or willfully, fraudulently or corruptly attempts to perform an act, as commissioner, unauthorized by law, in addition to the penalty provided in the Penal Code, forfeits to the county five hundred dollars for every such act.

1887 R. S. Sec. 1791.

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Section 1625. Who Eligible: No person is eligible to a county office who at the time of his election or appointment is not an elector of the county in which the duties of the office are to be exercised.

1887 R. S. Sec. 1810, modified by act 1899, 5th Ses. p. 34, Sec. 5.

QUALIFICATIONS: If a person elected to a county office is not qualified to enter into and hold the same at the time fixed by law, the office becomes vacant and may be filled as pro-

vided by law.—People v. Curtis, 1 Idaho, 753.

When a disability is removed before the commencement of a term, a person will be entitled to hold office.—State v. Murray, 28 Wis. 96; but see note to Sec. 268.

Section 1626. Oath of Office, When and Where Taken: The oath of office must be taken by county commissioners before the county recorder of their respective counties on the second Monday of January succeeding each general election, and on the same day the county officers must take and subscribe the official oath before the chairman of the board.

1899, 5th Ses. p. 67, Sec. 4; 1895, 3d Ses. p. 139, amending laws of 1887 R. S. Sec. 355.

An assessor and tax collector, whose oath of office, as both assessor and tax

collector, is endorsed on his bond as assessor, is not required to take another oath as tax collector.—Gorman v. Commissioners of Boise County et al. 1 Idaho, 553.

Section 1627. County Officers Enumerated: The officers of a county are:

County commissioners;

A sheriff;

A county treasurer who is ex-officio public administrator;

A probate judge;

A county superintendent of public instruction;

A county assessor who is ex-officio tax collector;

A coronor;

A surveyor;

A clerk of the district court, who shall be ex-officio auditor and recorder.

A prosecuting attorney.

1887 R. S. Sec. 1812, rewritten by Commission.

Section 1628. Term of Office: The regular term of office of each of the above named officers shall commence on the first Monday of January next after his election and shall continue for a term of two years and until his successor is elected and qualified; except

the clerk of the district court and ex-officio auditor and recorder whose term shall continue for four years, and until his successor is elected and qualified.

New section by Cimmission, rewritten from laws of 1899, 5th Ses. p. 67, Sec. 1, and p. 69, Sec. 5.

TERM OF OFFICE: The right of an officer to hold office until his successor

is elected and qualified is as much a part of his estate in the office as the original term for which he was elected.—People ex rel. Glidden v. Green, 1 Idaho, 235.

Section 1629. Appointment of Deputies: Every county officer except probate judge, county superintendent of public instruction, commissioner and coronor, may appoint as many deputies as may be necessary for the prompt and faithful discharge of the duties of his office. If for any cause the county superintendent is unable to attend to the duties of his office, he shall appoint a deputy, who shall take the usual oath of office and who may exercise all the functions of the county superintendent, but such deputy shall receive no salary from the public fund. The appointment of deputies and subordinate officers must be made in writing and filed in the office of the recorder.

1887 R. S. Secs. 1815 and 1819; and 1899, 5th Ses. p. 90, Sec. 25.

Sec. 6, Art. XVIII of the constitution was not intended to repeal Sec. 1815, Rev. St., so far as the latter section

authorizes certain officers to appoint deputies, but only to prohibit the salaries of such deputies from becoming a charge against the county.—Taylor v. Canyon County, 61 Pac. 521.

Section 1630. Who may Employ Deputies at Expense of County: The sheriff and clerk of the district court and ex-officio auditor and recorder, shall be empowered by the board of county commissioners to appoint such deputies and clerical assistance as the business of their offices may require, said deputies to receive such remuneration as may be fixed by said board of county commissioners, which remuneration shall be paid quarterly in the same manner as the salaries of the county officers are paid: Provided, That any of the officers mentioned in this section requiring the services of one or more deputies or requiring clerical assistance shall for a period of at least thirty days before any regular meeting of the board of county commissioners, publish a notice in some newspaper at the county seat, or if no newspaper is published at the county seat, then in some other newspaper published in the county, or if no newspaper be published in the county, then by posting a notice in his office for a period of thirty days before said regular meeting of his intention to apply to the board of county commissioners for a deputy or deputies or for clerical assistance, and no deputy shall be appointed or clerical assistance allowed by said board until due proof of the publication of said notice shall have been furnished said board and the necessity for said assistance is satisfactorily shown, and any taxpayer in the county shall have a right to appear before said board and protest against said appointment and show cause why said assistance should not be allowed. Provided further, That during the terms of the district court the district judge may authorize said officers to employ such temporary assistance as they may need, and his certificate shall be sufficient proof to the board of the necessity of such employment.

1899, 5th Ses. p. 407, Sec. 4.

APPOINTMENT OF DEPUTIES:

Under the provisions of Section 6, Art. XVIII of the constitution, the clerk of the court, ex-officio auditor and recorder, and the sheriff of the county, are in certain cases entitled to appoint such deputies and clerical assistance as the business of their office may require, when so empowered by the commissioners. And such power should be given by the commissioners whenever it is shown that the necessity exists therefor, and the facts creating the necessity ought to be shown upon the record of the board.—*Woodward v. Board of Comm'rs (Idaho)*, 51 Pac. 143. Neither of such officers can appoint a deputy unless empowered by the board of county commissioners to do so, and the board must determine the necessity therefor before they can grant such power.—*Campbell v. Board of Comm'rs (Idaho)*, 46 Pac. 1022; *Taylor v. Canyon County (Idaho)*, 56 Pac. 168. The appointment of a deputy, when authorized by the commissioners, is not the creation of an office.—*Dunbar v. Canyon County (Idaho)*, 59 Pac. 536. Where the necessity for the appointment of a deputy is occasioned by the sickness or absence of an officer on business not connected with his office, the county is not liable for the compensation of the deputy.—*Woodward v. Commissioners*, supra.

When the record shows that upon the application of the officer, the board of county commissioners, after hearing evidence in support of such application, found and determined that a necessity for such appointment existed, and thereupon authorized and empowered such officer to appoint a deputy and fix his salary. It is the duty

of said board of commissioners to audit and allow the claim for such salary of the deputy, and upon their refusal to do so, an action against the county for the amount of said deputy's salary will lie.—*Dunbar v. Canyon County*, supra.

The order of the board of commissioners authorizing or refusing to authorize the appointment of a deputy may be reviewed on appeal by the district court. When such appeal is taken, there must be a trial de novo by the district court.—*Campbell v. Board of Commissioners*, supra.

The complaint of a county officer in an action against the county to recover the salary of a deputy, must allege that the county commissioners found that the business of said office required the appointment of a deputy, and the proper evidence in support thereof was offered before such board.—*Taylor v. Canyon County*, supra. And this fact will not be inferred from the facts that the county commissioners in considering the said matter examined said evidence, and after being advised in the matter, empowered the sheriff to appoint a deputy.—Id.

Assessors and tax collectors are not entitled to deputies or clerks at the public expense.—*Fremont County v. Brandon (Idaho)*, 56 Pac. 264.

Under the provisions of Sec. 6, Art. XVIII, Const., as it existed before amendment, where the board of county commissioners, upon proper application and proof, empowered the sheriff to appoint a deputy and fixed such deputy's salary, the salary is a charge against the county.—*Taylor v. Canyon County*, 61 Pac. 521.

Section 1631. Designation of Senior Deputy: When a county officer has more than one deputy he must designate one, by indorsement upon his appointment as senior deputy, and in case of a vacancy in the office, by death, resignation, or otherwise, or of the officer's absence, or inability to perform the duties of his office, such deputy must continue to perform the duties of the office during such vacancy, absence or inability.

1887 R. S. Sec. 1818.

Section 1632. Name of Principal Includes Deputies: Whenever the official name of any principal officer is used in any law conferring power, imposing duties or liabilities, it includes his deputies.

1887 R. S. Sec. 1820.

Section 1633. Vacancies, General Reference: Vacancies in county offices are filled as provided in Title IV, Chapter XXIX, Section 912 of this Code.

See note to Sec. 909.

New Sec. by Commission.

Section 1634. Offices at County Seat. Office Hours:

Sheriffs, recorders, treasurers, assessors, county superintendents and prosecuting attorneys must have their offices at the county seat, and keep them open for the transaction of business from nine o'clock a. m. till five o'clock p. m. every day in the year except holidays. The probate judge must have an office at the county seat, and must establish such rules and hours for official business as may be necessary for the dispatch thereof.

1887 R. S. Sec. 1822.

Section 1635. Penalty of Officer Attaches to Sureties on Bond: Whenever, except in criminal prosecutions, any special penalty, forfeiture or liability is imposed on any officer for non-performance or mal-performance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

1887 R. S. Sec. 1823.

Proceedings against an officer for neglect of duty, being a personal default, will by no means involve his

successor, and such successor is not a proper party to the record.—Beachy v. Lamkin, 1 Idaho, 50.

Section 1636. Who may Administer Oaths: Every county officer and every justice of the peace may administer and certify oaths.

1887 R. S. Sec. 1824.

Section 1637. Certain Officers to Reside at County Seat: The following officers must reside at the county seat of their respective counties: The probate judge, the sheriff, the assessor, the prosecuting attorney, the clerk of the district court, and ex-officio auditor and recorder, and the superintendent of public instruction.

1887 R. S. Sec. 1825, rewritten by Commission.

Section 1638. Absence from State Limited: No county officer must absent himself from the state for more than twenty days unless with the consent of the board of county commissioners.

1899, 5th Ses. p. 13; 1897, 4th Ses. p. 1826.
15, amending laws of 1887 R. S. Sec.

Section 1639. Officers Prohibited from Practicing Law: Sheriffs, clerks of courts and their deputies, and constables are prohibited from practicing law or acting as attorneys or counselors at law, or having as a partner a lawyer or any one who acts as such.

1887 R. S. Sec. 1827.

Section 1640. Quarterly Statement by Auditor and Treasurer: The auditor and treasurer of each county must, on the second Monday in January, April, July and October, make a joint statement to the board of commissioners, showing the whole amount of collections (stating particularly the source of each portion of the revenue) from all sources paid into the county treasury, the funds among which the same was distributed, and the amount to each; the total amount of warrants drawn and paid, and on what

fund; the total amount of warrants drawn and unpaid, and accounts or claims audited, or allowed and unpaid, and the fund out of which they are to be paid, and generally make a full and specific showing of the financial condition of the count; and said auditor and treasurer shall cause to be published a summary of said statements in some newspaper published in the county.

1899, 5th Ses. p. 233; 1895, 3d Ses. p. 2010.
13, amending laws of 1887 R. S. Sec.

Section 1641. Bonds of Officers—Amounts: County and district officers must execute official bonds in the following amounts:

1. County commissioners each in the sum of five thousand dollars;
2. Probate judges each in the sum of five thousand dollars;
3. County treasurers each in double the probable amount of money that may at any time come into his hands as such treasurer, to be fixed by the board of county commissioners, but in no case to be less than ten thousand dollars;
4. Sheriffs each in the sum of ten thousand dollars;
5. County recorders each in the sum of not less than five nor more than twenty thousand dollars, to be fixed by the board of county commissioners and to cover his duties and liabilities as recorder, auditor and clerk of the board of county commissioners;
6. Assessors each in the sum of five thousand dollars;
7. Tax collectors each in the sum of not less than five, nor more than fifty thousand dollars, to be fixed by the board of county commissioners;
8. Prosecuting attorneys each in the sum of two thousand dollars;
9. School superintendents each in the sum of one thousand dollars;
10. County surveyors each in the sum of two thousand dollars;
11. Coronors each in the sum of one thousand dollars;
12. Public administrators each in the sum of two thousand dollars.

1887 R. S. Sec. 1828, Sub. 7 amended by laws of 1889, 15th Ses. p. 16.

OFFICIAL BONDS, SUFFICIENCY: The intention of an official bond is to protect the public, and if it is lawful in itself, is good, though it does not fill all the statutory requisites, and the fact that its conditions are less onerous than those provided by statute, is no defense to a breach of its conditions. The sum set opposite the names of the respective parties subscribing to an official bond, joint and several in its terms, is intended to show the sums for which they intend to justify and to fix their liabilities toward each other.—*People v. Slocum et al.* 1 Idaho, 62. An official bond in substantial compliance with the statute is sufficient.—*Ada County v. Ellis (Idaho)*, 48 Pac. 1071.

The order of a board of county commissioners requiring the officers-elect to give bonds in proper sums is of no

force, except as to the officers-elect at the time of making such order.—*Gorman v. Comm'rs of Boise County*, 1 Idaho, 553.

LIABILITY OF SURETIES: A bond which binds the principal and sureties, severally, is several as well as joint and binds the sureties, though their principal does not sign it.—*State v. McDonald (Idaho)*, 40 Pac. 312; *Douglas County v. Bardon*, 79 Wis. 641, 48 N. W. 969; in an action on a joint and several bond, all or any of the sureties may be sued, and the fact that a surety did not justify will not release him from liability, and if the bond has been accepted without such justification, and in such action, the several items of defalcation need not be separately stated in the complaint.—*State v. McDonald*, supra. And the negligence of the county commissioners in discharging their supervisory duties over the officers will not affect the liability of the sureties upon his bond.—

County of Waseca v. Sheehan, 42 Minn. 57, 43 N. W. 690.

An action will not lie against his sureties to recover money wrongfully and illegally paid to an officer, by the board of county commissioners, after the expiration of his term of office, the receipt of such money not being an official act for which his sureties are liable.—Ada County v. Ellis (Idaho), 48 Pac. 1071.

The liability of sureties on an official bond is statutory; and an action on such liability must be brought within three years.—Ada County v. Ellis, *supra*.

Sureties on official bonds are not liable for the wrongful acts of the principal, not done in the line of his official duty.—Clinton v. Nelson, 2 Utah, 284.

Section 1642. Amount of Bond not Fixed by Law:

When the amount of the bond to be given by any county, district or precinct officer is not fixed by law the amount must be fixed by the board of commissioners.

1887 R. S. Sec. 1829.

COMMISSIONERS.

Section 1643. General Reference:

The qualification and terms of office of members of the board of county commissioners, and the powers and duties of said board are as fixed in Chapter 63 of this title.

New Sec. by Commission.

SHERIFF.

Section 1644. Process and Notice Defined:

“Process” as used in this subdivision includes all writs, warrants, summons and orders of courts of justice or judicial officers.

“Notice” includes all papers and orders (except process) required to be served in any proceeding before any court, board or officer, or when required by law to be served independently of such proceeding.

1887 R. S. Sec. 1870.

Section 1645. Duties:

The sheriff must:

1. Preserve the peace;
2. Arrest and take before the nearest magistrate for examination, all persons who attempt to commit or who have committed a public offense;
-
3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge;
4. Attend all courts, except justices' and probate courts at their respective terms held within his county, and obey their lawful orders and directions;
5. Command the aid of as many male inhabitants of his county as he may think necessary in the execution of these duties;
6. Take charge of and keep the county jail and the prisoners therein;
7. Indorse upon all process and notices the year, month, day, hour and minute of reception, and issue therefor to the person delivering it on payment of fees, a certificate showing the names of the parties, title of paper and time of reception;
8. Serve all process and notices in the manner prescribed by law;
9. Certify under his hand upon process or notices the manner and

time of service, or if he fails to make service, the reasons of his failure, and return the same without delay;

10. Perform such other duties as are required of him by law.

1887 R. S. Secs. 1871 and 1888; Compiled Laws, 1875, p. 544.

Liquor dealers' license: Sec. 1505.

Duty as to sale of arid lands: Secs. 501, 504.

DUTIES OF SHERIFF: Sub. 2. The sheriff cannot claim a reward for making arrest within his county, of a resident thereof, for a felony committed therein, which it was his official duty to make.—Hogan v. Stophlet, 179 Ill. 150, 44 L. R. A. 809, 53 N. E. 604.

Sub. 4. Sheriffs are not entitled to compensation for attending upon a district or any other court of this state.

—Campbell v. Board of Comm'rs (Idaho), 37 Pac. 329; Eakin v. Nez Perce County (Idaho), 36 Pac. 702.

Sub. 9. Where a writ of restitution was duly placed in the hands of a sheriff for service and he refused to execute the same, unless indemnified, for the reason that he found persons that were not parties to the suit in possession of the property, it was held that he was not entitled to indemnity and should have executed the writ.—Ah Kle et al. v. Gregory (Idaho), 34 Pac. 812.

Section 1646. Return of Process and Notice to Another County: When process or notices are returnable to another county, he may inclose such process or notice in an envelope addressed to the officer from whom the same emanated and deposit it in the post-office, prepaying postage.

1887 R. S. Sec. 1872; Compiled Laws 1875, p. 545.

Section 1647. Return is Prima Facie Evidence: The return of the sheriff upon process or notices, is prima facie evidence of the facts in such return stated.

1887 R. S. Sec. 1873.

Section 1648. Failure to Return; Liability: If the sheriff does not return a notice or process in his possession with the necessary endorsement thereon without delay, he is liable to the party aggrieved for the sum of two hundred dollars and for all damages sustained by him.

1887 R. S. Sec. 1874.

An officer who does not return the writ within the time required is personally liable on his bond for the amount claimed in the execution. If he does not return the writ, it is pre-

sumed that it is because he has made the money, and if he has not done so, he should make his return for his own protection and discharge.—Roth v. Duval et al. 1 Idaho, 149.

Section 1649. Liability for Neglect to Levy: If the sheriff to whom a writ of execution is delivered neglects or refuses, after being required by the creditor or his attorney, to levy upon or sell any property of the party charged in the writ which is liable to be levied upon and sold, he is liable to the creditor for the value of such property.

1887 R. S. Sec. 1875; Compiled Laws 1875, p. 545, Sec. 8.

The sheriff may be proceeded against as for a contempt for neglecting to levy when directed to do so by the

creditor's attorney, and may be adjudged to pay the whole debt. It is no excuse that the execution was not dated.—State v. Brophy, 38 Wis. 413.

Section 1650. Damages for Refusing to Pay Over Money: If he neglects or refuses to pay over on demand, to the person entitled thereto, any money which may come into his hands by virtue of his office (after deducting his legal fees), the amount thereof,

with twenty-five per cent. damages and interest at the rate of ten per cent. per month from the time of demand, may be recovered by such person.

1887 R. S. Sec. 1876; Compiled Laws 1875, p. 545, Sec. 9.

LIABILITY OF SHERIFF: Where the sheriff receives payment of the amount called for by the execution issued upon judgment, and neglects to pay over the same, his sureties are responsible therefor in an action brought upon his bond; but are not responsible for penalties provided by statute for such failure.—*Robinson v. Kinney*, 2

Idaho, 1170, 31 Pac. 815. A sheriff and his sureties are liable for the proceeds of property which the sheriff seized under a writ of attachment, disposed of and failed to account for.—*Work v. Kinney* (*Idaho*), 51 Pac. 745; they are also liable for fees and licenses collected belonging to the county or state.—*State v. McDonald* (*Idaho*), 40 Pac. 312.

Section 1651. Liability for Suffering an Escape: A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail;

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment;

3. When the arrest is on an execution or commitment other than to enforce the payment of money, he is liable for the actual damages sustained;

4. Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation and exculpation.

1887 R. S. Sec. 1877; Compiled Laws 1875, p. 549, Sec. 33.

Section 1652. Liability for Rescue: He is liable for a rescue of a person arrested in a civil action, equally as for an escape.

1887 R. S. Sec. 1878; Compiled Laws 1875, p. 549, Sec. 34.

Section 1653. No Action Permitted After Recapture: An action cannot be maintained against the sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff.

1887 R. S. Sec. 1879; Compiled Laws 1875, p. 549, Sec. 35.

Section 1654. No Direction Excuses Sheriff Except It be Written: No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or to any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing, signed by the attorney of the party, or by the party if he has no attorney.

1887 R. S. Sec. 1880; Compiled Laws 1875, p. 551, Sec. 45.

Section 1655. Commitment for Default Creates Vacancy, When: When the sheriff is committed under an execution or commitment, for not paying over money received by him by virtue

of his office, and remains committed for sixty days, his office is vacant.

1887 R. S. Sec. 1881; Compiled Laws 1875, p. 551, Sec. 46.

Section 1656. Must Execute Process When: A sheriff or other ministerial officer, is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.

1887 R. S. Sec. 1882; Compiled Laws 1875, p. 552, Sec. 48.

It is well settled that a sheriff cannot refuse to serve process regularly

issued to him, because in his opinion it is defective or irregular.—Roth v. Duval et al. 1 Idaho, 149.

Section 1657. Must Exhibit Process Upon Request: The officer executing process must then and at all times subsequent, so long as he retains it, upon request show the same, with all papers attached, to any person interested therein.

1887 R. S. Sec. 1883; Compiled Laws 1875, p. 552, Sec. 49.

Section 1658. Must Act as Crier: The sheriff in attendance upon court must act as the crier thereof, call the parties and witnesses and all other persons bound to appear at the court, and make proclamation of the opening and adjournment of the court, and of any other matter under its direction.

1887 R. S. Sec. 1884; Compiled Laws 1875, p. 552, Sec. 50.

Section 1659. Service Upon Sheriff, How Made: Service of a paper, other than process, upon the sheriff may be made by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or if no such person is there, by leaving it in a conspicuous place in the office.

1887 R. S. Sec. 1885; Compiled Laws 1875, p. 545, Sec. 12.

Section 1660. When Coroner Must Act: When the sheriff is a party to an action or proceeding, the process and orders therein, which it would otherwise be the duty of the sheriff to execute, must be executed by the coronor of the county.

1887 R. S. Sec. 1886; Compiled Laws 1875, p. 552, Sec. 54.

Section 1661. Elisor to Act, When: Process and orders in an action or proceeding may be executed by a person residing in the county, designated by the court, the judge thereof, or a probate judge, and denominated an elisor in the following cases:

1. When the sheriff and coronor are both parties;
2. When either of these officers is a party and the process is against the other; and
3. When either of these officers is a party and there is a vacancy in the office of the other, or when it appears by affidavit to the satisfaction of the court in which the proceeding is pending, or the judge thereof, that both of these officers are disqualified, or by reason of any bias, prejudice, or other cause, would not act promptly or impartially. When the process is delivered to an elisor he must execute and return

it in the same manner as the sheriff is required to execute similar process.

1887 R. S. Sec. 1887; Compiled Laws 1875, p. 552, Sec. 57.

An elisor may be appointed where a disqualification of a sheriff is admitted and it is shown that the coroner is disqualified.—*People v. Sehorn*, 116

Cal. 503, 48 Pac. 495. The appointment of an elisor to take charge of a jury during the progress of a trial is not within the provisions of Section 1661 of this Code.—*State v. Hendel* (Idaho), 35 Pac. 836.

Section 1662. Powers of Elisor: An elisor appointed to execute process and orders in the cases mentioned in the preceding section, is invested with the powers, duties, and responsibilities of the sheriff, in the execution of the process, or orders, and in every matter incidental thereto.

1887 R. S. Sec. 1891; Compiled Laws 1875, p. 553, Sec. 60.

An elisor appointed to execute process and orders of the court is invested with the powers, duties, and responsibilities of the sheriff in the perform-

ance of such duties, and is entitled to the compensation allowed the sheriff for performing them, when he demands the same. — *Griffith v. Montandon* (Idaho), 35 Pac. 704.

Section 1663. Sheriff or Coroner, Where Confined Upon Arrest: If the sheriff, on being arrested by a coronor or if the sheriff, or coronor on being arrested by an elisor, or if another person in an action in which both the sheriff and coronor are plaintiffs upon an order of arrest in a civil action, neglect to give bail or make a deposit of money instead thereof, or if the sheriff be arrested on execution against his body, or on a warrant of attachment, he or they must be confined in a house other than that of the sheriff, or the county jail, in the same manner as the sheriff is required to confine a prisoner in the county jail; the house in which he is thus confined thereupon becomes for that purpose the county jail.

1887 R. S. Sec. 1890, Compiled Laws 1875, p. 553, Sec. 59.

Section 1664. Compensation for State Services: When the sheriff or other officer is legally required to perform a service in behalf of the people of this state, which is not chargeable to his county or a private person, his account and claim for compensation therefor, must be filed with the state auditor, and by him referred to the state board of examiners, for their consideration and they must transmit the same to the legislature with their report thereon, at its first session after the rendition of such service, for its action thereon.

1887 R. S. Sec. 1889; Compiled Laws 1875, p. 551, Sec. 47, rewritten by Commission to conform to provisions relating to board of examiners.

State board of examiners: Sec. 342 et seq.

Section 1665. Powers of Outgoing Sheriff Cease, When: When a new sheriff is elected and has qualified, and given the security required by law, the county recorder must give a certificate of that fact, under his seal of office, upon the service of which on the former sheriff his powers cease, except as otherwise provided in this chapter.

1887 R. S. Sec. 1892; Compiled Laws 1875, p. 550, Sec. 36.

Section 1666. Sheriff to Deliver Property to Successor: Within three days after the service of the certificate upon the former sheriff, he must deliver to his successor:

First. The jail of the county, with its appurtenances, and the property of the county therein;

Second. The prisoners then confined in the county jail;

Third. The process, orders and other papers in his custody, authorizing or relating to the confinement of the prisoners;

Fourth. All process and orders for the arrest of a party, and all papers relating to the summoning of a grand or trial jury, which have not been fully executed;

Fifth. All executions, attachments, and final process, except those which he has executed or has begun to execute, by the collections of money or a levy on property.

1887 R. S. Sec. 1893; Compiled Laws 1875, p. 550, Sec. 37.

Section 1667. Written Transfer. Acknowledgment of Delivery: He must also at the same time, deliver to the new sheriff a written transfer of the property, process, papers, and prisoners delivered, specifying the process or order by which each prisoner delivered was committed and detained. The new sheriff must thereupon acknowledge, in writing on a duplicate of the transfer, the receipt of the property, process, papers and prisoners therein specified.

1887 R. S. Sec. 1894; Compiled Laws 1875, p. 550, Sec. 38.

Section 1668. Sheriff to Complete Process: Notwithstanding the election and qualification of a new sheriff, the former sheriff must return all process and orders before and after judgment, which he has fully executed, and must complete the execution of all final process which he has begun to execute previous to the expiration of his term of office, except as provided in the next section.

1887 R. S. Sec. 1895; Compiled Laws by Commission to comply with act of 1875, p. 550, Sec. 39, exception added 1899, 5th Ses. p. 235.

Section 1669. New Sheriff May Make Deed to Property Sold: When the sheriff who has sold any real estate shall die, resign, be removed from office, or his term of office expire, before executing any good and sufficient deed for such real estate, such deed may be executed by the successor in office of such sheriff with the same effect to all intents and purposes as if made by the sheriff making the sale.

1899, 5th Ses. p. 235; 1895, 3d Ses. p. 20.

Section 1670. New Sheriff May Take Possession, When: If the former sheriff refuse or neglect to deliver to his successor the jail, process, papers, and prisoners in his charge, the new sheriff may, notwithstanding, take possession of the jail, and of the prisoners confined therein, and the probate court, or the probate judge, may, upon application, order the delivery of the process and papers.

1887 R. S. Sec. 1896; Compiled Laws 1875, p. 550, Sec. 40.

COUNTY TREASURER AND EX-OFFICIO PUBLIC ADMINISTRATOR.

Section 1671. Duties of Treasurer: The county treasurer must:

1. Receive all moneys belonging to the county, and all other moneys by law directed to be paid to him, safely keep the same, and apply and pay them out, rendering account thereof as required by law;
2. File and keep the certificates of the auditor delivered to him when moneys are paid into the treasury;
3. Keep an account of the receipt and expenditure of all such moneys, in books provided for the purpose; in which must be entered the amount, the time when, from whom, and on what account all moneys were received by him; the amount, time when, to whom, and on what account all disbursements were made by him;
4. So keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and expenditures shown in one general or cash account;
5. Enter no moneys received for the current year on his account with the county for the past fiscal year, until after his annual settlement for the past year has been made with the county auditor.
6. Disburse the county moneys only on county warrants issued by the county auditor; based on orders of the board of commissioners, or as otherwise provided by law.

1887 R. S. Sec. 1840.

Section 1672. Money Must be Accompanied by Certificate of Auditor: He must receive no money into the treasury unless accompanied by the certificate of the auditor.

1887 R. S. Sec. 1841.

Where a tax collector deposits with the county treasurer certain money received on taxes, the treasurer is not required to segregate the amount to be credited to a certain fund or to pay it

out to those entitled to the fund until the tax collector settles with the auditor and the latter has certified the amount to the treasurer.—*Meyer v. Widber* (Cal.), 58 Pac. 532.

Section 1673. Must Receipt for Money: When any money is paid to the county treasurer he must give to the person paying the same a receipt therefor, which must forthwith be deposited with the county auditor, who must charge the treasurer therewith and give the person paying the same a receipt.

1887 R. S. Sec. 1842; Compiled Laws 1875, p. 575, Sec. 7.

Section 1674. Payment of Warrants: When a warrant is presented for payment if there is money in the treasury for that purpose, he must pay the same, and write on the face thereof "paid," the date of payment and sign his name thereto.

1887 R. S. Sec. 1843; Compiled Laws 1875, p. 575, Sec. 9.

Section 1675. Registry of Warrants when no Funds: When any warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon, "not paid for want of funds," annexing the date of presen-

tation and sign his name thereto; and from that time until paid the warrant bears seven per cent. per annum interest.

1887 R. S. Sec. 1844; Compiled Laws 1875, p. 575, Sec. 10.

Section 1676. County Warrant Bulletin: The county treasurer shall provide himself, at the expense of the county, with a bulletin board, to be not less than twenty inches wide and thirty inches long,, to be painted black and across the top of which shall be painted in white "block" letters, not less than two inches high, the words "county warrant bulletin." It shall be the duty of the said treasurer to keep such bulletin conspicuously, securely and permanently in place at the front door of his office, and thereupon to post in a manner which will insure continuous notice for not less than sixty days, all notices issued by him whether written or printed, calling for the presentation of county warrants for payment.

1899, 5th Ses. p. 434, Sec. 1.

Section 1677. When Treasurer Must Post Call for Warrants: Whenever there is an amount to the credit of any county fund, as shown by the books of the county treasurer, sufficient to pay the warrant or warrants next entitled to payment therefrom, the county treasurer shall immediately post at the door of his office, as provided in section 1676, a notice that such warrant or warrants will be paid on presentation, stating therein the number and series of any such warrants and the fund or funds upon which drawn.

1899, 5th Ses. p. 434, Sec. 2.

Section 1678. Call for Warrants Monthly. Notice, How Given: On the first Monday of each month, if there is a sufficient amount to the credit of any county fund or funds to pay the warrant or warrants, next entitled to be paid therefrom, and whenever it shall appear from the books of the county treasurer that there is to the credit of any county fund or funds against which there are outstanding warrants unpaid, the sum of one thousand dollars, available for the payment of said warrants, the said treasurer shall cause to be published in some newspaper published in his county, or if none is published then by written notice posted upon the court house door, notice that the warrant or warrants next entitled to be paid therefrom will be paid upon presentation. All warrants which have heretofore been called by posting, as provided in section 1677, and which remain unpaid at the time of publishing such notice, shall be included in such published notice; and ten days from the first publication, or posting of such notice, such warrants shall cease to draw interest.

1899, 5th Ses. p. 434, Sec. 3.

Section 1679. Advertising Warrants, What to be Published: In advertising warrants in any newspaper, the treasurer must not publish the warrants in detail, but give notice only that county warrants issued prior to such a date stated in the notice are payable. When a part only of the warrants issued on the same day are payable the treasurer must designate such payable warrants in the advertisement.

1899, 5th Ses. p. 269, Sec. 36; 1895, 3d Ses. p. 123, Sec. 31, amending laws of 1887 R. S. Sec. 1846.

Section 1680. Warrants Paid in Order of Issue. Comparing Books: Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of moneys in the treasury properly applicable to such warrants according to the priority of time in which they are issued.

The time of presenting such warrants must be noted by the treasurer and upon the receipt of the moneys into the treasury, not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrant. On the first Monday of each month the county treasurer must present to the county auditor for his inspection the county treasurer's warrant register, and must in company with the auditor compare the same with the county commissioners' records of claims allowed by them against the county. If any warrant which has been registered shall differ in amount from the claims so allowed by the commissioners, the county treasurer must not pay the same but must report such warrant at the next meeting of the county commissioners for their action.

1899, 5th Ses. p. 269, Sec. 37; 1895, 3d Ses. p. 123, Sec. 32, amending laws of 1887 R. S. Sec. 1847.

Section 1681. Warrant not Presented in Sixty Days, Result: Should warrants not be presented for payment within sixty days from the date of the notice hereinbefore provided for, the fund set aside for the payment of the same must be applied by the treasurer to the payment of the unpaid warrants next in order in date of issue.

The board of commissioners may, on application and presentation of warrants properly endorsed which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

1899, 5th Ses. p. 269, Sec. 38; 1895, 3d Ses. p. 123, Sec. 33, amending laws of 1887 R. S. Sec. 1848.

Section 1682. Record of Interest Paid on Warrants: When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of such interest distinct from the principal.

1887 R. S. Sec. 1849; Compiled Laws 1875, p. 575, Sec. 12.

Section 1683. Penalty for Neglect of Duty: For all sums which are paid by the county treasurer as interest upon any warrant or warrants, after the earliest date at which there were sufficient funds with which to have called and paid the same, such officer shall be liable upon his official bond; and for the willful violation of any of these provisions the said treasurer shall be deemed guilty of neglect to perform the official duties pertaining to his office, and shall be removed therefrom as provided by law.

1899, 5th Ses. p. 435, Sec. 4,

Removal from office: Penal Code, Chap. CCXXVI.

Section 1684. Monthly Statement and Settlement with Auditor: The treasurer must settle his accounts relating to the collection, care and disbursement of public revenue, of whatsoever nature and kind, with the auditor, on the first Monday of each month. For the purpose of making such settlement, he must make out a statement under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements, and to whom, with the amount remaining on hand. He must in such settlements, deposit all warrants redeemed by him and take the auditor's receipt therefor. He must also make a full settlement of all accounts with the auditor annually on the second Monday of January, in the presence of the commissioners, who have a supervisory control thereof.

1887 R. S. Sec. 1850.

Section 1685. Statement to Board of Commissioners: Each county treasurer must make a detailed report at every regular meeting of the board of commissioners of his county, of all moneys received by him and the disbursement thereof, and of all debts due to and from the county, and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county may clearly and distinctly appear.

1887 R. S. Sec. 1851.

Section 1686. Penalty for not Reporting: If any county treasurer neglects or refuses to settle or report as required in sections 1684 and 1685, he forfeits and must pay to the county the sum of five hundred dollars for every such neglect or refusal, and the board of commissioners must institute suits for the recovery thereof.

1887 R. S. Sec. 1852.

Section 1687. Treasurer to Sue Prosecuting Attorney, When: If the prosecuting attorney refuses or neglects to account for and pay over money received by him as required by law, the county treasurer must bring an action against him for the recovery thereof in the name of the county, and may recover in such action in addition to the amount so received, fifty per cent. thereon by way of damages.

1887 R. S. Sec. 1853.

Section 1688. Treasurer Must Sue Coroner, When: If the coroner or any justice of the peace acting as coroner, fails to deliver to the treasurer within thirty days after any inquest upon a dead body, all money and property found upon such body, unless claimed in the meantime by the legal representative of the decedent as required by law, the treasurer must proceed against the coroner, or justice acting as coroner, to recover the same by civil action in the name of the county.

1887 R. S. Sec. 1854; Compiled Laws 1875, p. 569, Sec. 15.

Section 1689. Disposal of Property Received from Coroner: The treasurer upon receiving from the coroner or justice

acting as coroner, money found on a dead body, must place it to the credit of the county. On receiving other property in like manner he must within thirty days sell it at public auction upon reasonable public notice, and must in like manner place the proceeds to the credit of the county.

1887 R. S. Sec. 1855; Compiled Laws 1875, p. 569, Sec. 16.

Section 1690. Money Paid to Legal Representatives,

When: If the money in the treasury is demanded within six years by the legal representatives of the decedent, the treasurer must pay it to them, after deducting the fees and expenses of the coronor and of the county in relation to the matter; or the same may be so paid at any time thereafter upon the order of the board of commisisoners.

1887 R. S. Sec. 1856; Compiled Laws 1875, p. 569, Sec. 17.

Section 1691. Treasurer Must Not Loan Public

Money: The county treasurer must keep all moneys belonging to this state or to any county of this state in his own possession until disbursed according to law. He must not place the same in the possession of any person to be used for any purpose; nor must he loan or in any manner use or permit any person to use the same, except as provided by law; but nothing in this section prohibits him from making special deposits for the safe keeping of the public moneys.

1887 R. S. Sec. 1857.

LIABILITY OF TREASURER: A treasurer is liable upon his official bond for the loss of money by the failure of the bank in which he has deposited it to his private account.—*State v. Mills*, 55 Wis. 229, 12 N. W. 359; he is not liable for money forcibly taken from him.—*Healdsburg v. Muligan* (Cal.), 45 Pac. 337. The contrary is held in *State v. Nevin* (Nev.), 7 Pac. 650. A treasurer and his sureties are liable for money lost by failure of a bank in which it is placed on general deposit.—*Bingham County v. Woodin* (Idaho), 55 Pac. 662; *Lowrey v. Polk Co.* (Iowa), 33 Am. Rep. 114; and this is true although the bank was reputed solvent and no place had

been provided by the county for the safe keeping of the funds.—*State v. Moore* (Mo.), 41 Am. Rep. 322.

Where an assessor and tax collector of a county paid into a bank a sum of money collected by him as such an official, and subsequently gave the outgoing treasurer of said county a check for the same, and the cashier of the bank in which the money was deposited without the knowledge or consent of the incoming treasurer passed a portion of said amount to the credit of the incoming treasurer, held, that this does not constitute "a deposit on general deposit" by such incoming treasurer.—*Bingham County v. Woodin*, supra.

Section 1692. Commissioners May Suspend Treas-

urer, When: Whenever an action based upon official misconduct is commenced against any county treasurer, the commissioners may, in their discretion, suspend him from office until such suit is determined, and may appoint some person to fill the vacancy.

1887 R. S. Sec. 1858.

A board of county commissioners may declare vacant the office of county treasurer upon the failure of such officer to file his official bond in the manner required by law or when it appears that the books of such office did not show the actual conditions of the office and that he has diverted certain funds of the county from their proper channel, and unlawfully paid out the same or that he is culpably negligent in the care and keeping of the public

moneys.—*Carland v. Commissioners*, 5 Mont. 579, 6 Pac. 24. And where such vacancy is declared and another person appointed as acting treasurer, and it appears at the time such county treasurer is a defaulter, such a suspension is a removal of the treasurer from office and requires him to deliver to the acting treasurer, or his successor, all the books, papers and money in his hands by virtue of his office.—*Loper v. State* (Kan.), 29 Pac. 687.

Section 1693. Legal Representatives of Treasurer Must Deliver Property: In case of the death of any county treasurer his legal representatives must deliver up all official moneys, books, accounts, papers and documents which come into their possession.

1887 R. S. first part of Sec. 1859.

Section 1694. Books Subject to Examination, by Whom: The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of commissioners and grand jury.

1887 R. S. Sec. 1860.

Section 1695. Commissioners and Auditor may Examine Books: The treasurer must permit the county commissioners and auditor to examine his books and count the money in the treasury whenever they may wish to make an examination or counting.

1887 R. S. Sec. 1861.

Section 1696. Public Administrator, General Reference: The duties of the treasurer as ex-officio public administrator are designated in Title XX, Chapter CXCVII, Code of Civil Procedure.

New Sec. by Commission.

PROBATE JUDGE.

Section 1697. Duties: The probate judge must:

1. Perform the duties of a magistrate;
2. Hold probate courts;
3. Take and certify acknowledgments to the execution of instruments in writing and grant certificates to the official character of the county officers;
4. Perform such other duties as are prescribed in any of the laws of this state.

1887 R. S. Sec. 1835.

To act on ferry license, when: Secs.

Duty respecting elections: Sec. 825. 1284, 1616.

Duty respecting timber: Secs. 1121, 1122. Taxes on estates: Sec. 1399.

Section 1698. Office for Probate Judge: It shall be the duty of the board of county commissioners of the different counties of the state when the county owns a fire proof building, to provide an office in said building for the use of the probate judge and for the safe keeping and protection of all probate records.

1887 R. S. Sec. 1836.

COUNTY SUPERINTENDENT OF PUBLIC INSTRUCTION.

Section 1699. General Reference: For election, qualification, and duties of superintendent see Title V Chapter XXXVI of this Code.

New Sec. by Commission.

Section 1700. Duties: The assessor must perform all the

duties required and imposed by law in the assessment of all property for taxation; he is ex-officio tax collector and is authorized and required to receive and collect all per capita or poll taxes, and all taxes assessed upon real and personal property as provided by law, and he has the powers provided by law to enforce the collection and payment of all such taxes. In addition to the duties of such assessor heretofore prescribed by law he shall assess and collect all taxes levied by cities, towns, villages and independent school districts authorized by law to collect revenue under the provisions of Title VII.

1901, 6th Ses. p. 290, Sec. 179.

Secs. 2669, 2670, 2671.

Duties respecting militia: Sec. 525.

Duty respecting special school taxes:

Assessments in irrigation districts: Sec. 1044.

CORONERS.

Section 1701. Inquests: The coroner must hold inquests as prescribed by the Penal Code.

1887 R. S. Sec. 2080.

Section 1702. Coroner to Bury Body, when: When an inquest is held by the coroner, and no other person takes charge of the body of the deceased, he must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a legal charge against the county.

1887 R. S. Sec. 2081; Compiled Laws 1875, p. 569, Sec. 22.

Section 1703. Disposition of Property found on Dead Body: The coronor must, within thirty days after an inquest upon a dead body, deliver to the county treasurer or the legal representatives of the deceased, any money or other property found upon the body.

1887 R. S. Sec. 2082; Compiled Laws 1875, p. 569, Sec. 15.

Section 1704. Statement Required of Coroner: Before auditing or allowing the accounts of the coronor, the commissioners must require him to file with the clerk of the board a statement in writing, verified by his affidavit, showing:

1. The amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;

2. The disposition made of such property.

1887 R. S. Sec. 2083; Compiled Laws 1875, p. 569, Sec. 18.

Section 1705. Justice of the Peace to Act as Coroner, when: If the office of coronor is vacant, or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county with the like authority and subject to the same obligations and penalties as the coronor.

1887 R. S. Sec. 2084; Compiled Laws 1875, p. 569, Sec. 19.

Section 1706. Coroner to Act as Sheriff, when: The coronor must perform the duties of sheriff in all cases where the sheriff is interested, or otherwise incapacitated from serving, and in

cases of vacancy by death, resignation, or otherwise, in the office of sheriff, the coronor must discharge the duties of such office until a sheriff is appointed or elected and qualified.

1887 R. S. Sec. 2085; Compiled Laws 1875, p. 567, Sec. 2.

Section 1707. Powers when Acting as Sheriff: Whenever the coronor acts as sheriff, he possesses the powers and may perform all the duties of sheriff, and is liable on his official bond, in like manner as a sheriff would be; and is entitled to the same fees as are allowed by law to the sheriff for similar services.

1887 R. S. Sec. 2086; Compiled Laws 1875, p. 567, Sec. 3.

SURVEYOR.

Section 1708. Must Make Surveys: The surveyor must make any survey that may be required by the order of court, or upon application of any person.

1887 R. S. first part of Sec. 2067.

Section 1709. Court may Order Survey by Any County Surveyor: When land, the title to which is in dispute before any court, is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

1887 R. S. Sec. 2069; Compiled Laws 1875, p. 795, Sec. 20.

Section 1710. Survey when Surveyor is interested: When it shall appear that the county surveyor is interested in any tract of land, the title of which is in dispute before the court, the court shall direct the survey or re-survey to be made by some capable person, who is in no wise interested, who shall be authorized to administer oaths in the same manner as the county surveyor is directed to do, and shall return said survey or re-survey on oath, or affirmation, and shall receive for his services the same fees that the county surveyor would receive for like services.

1899, 5th Ses. p. 296, Sec. 2; 1897, 4th Ses. p. 19, Sec. 2.

Section 1711. Rules for Making Surveys: No surveys or re-surveys hereafter made by the county surveyor or other surveyor, shall be considered legal evidence in any court within the state, except such surveys as are made in accordance with the United States manual of surveying instructions, the circular on restoration of lost or obliterated corners and subdivisions of sections, issued by the general land office, or by the authority of the United States, the state of Idaho or by mutual consent of the parties.

1899, 5th Ses. p. 295, Sec. 1; 1897, 4th Ses. p. 19, Sec. 1.

Section 1712. Record of Surveys. Furnishing Copy. Marking Corners: The surveyor of each county shall:

First. Keep a fair and correct record of all official surveys made by himself or deputies in good and substantial books which shall be furnished him by the county commissioners for that purpose. All records of road surveys and county boundary lines to be kept in sep-

arate books. All of which records and accompanying plats he shall, at the expiration of his term of office, turn over to his successor in office, together with the records and plats received by him from his predecessor in office.

Second. Number his surveys progressively with date, township, range, section and name of party for whom it is executed. The mode of writing field notes and preparing plats shall be in the same manner as prescribed for the guidance of United States deputy surveyors, as nearly as practicable.

Third. Deliver a copy of any survey to any person or court requiring the same on payment of the fee allowed by law.

Fourth. All corners established or re-established shall be of stone or other imperishable material placed securely in the ground and of such dimensions as are required by the U. S. Manual. The marks so placed on said corners, when section or quarter section, shall be the same as prescribed by said U. S. manual, with the additional letters C. S. (for county survey). All other corners in the interior of a section shall be so marked as to indicate what they represent, in addition to the letters C. S. The same instructions apply to the marking of bearing trees and bearing objects.

1899, 5th Ses. p. 296, Sec. 3; 1897, 2067.
4th Ses. p. 19, Sec. 3; 1887 R. S. Sec.

Section 1713. Survey of Land Lying in Two Counties: Any person owning or claiming lands which are divided by county lines, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated, and such survey shall be as valid as though the lands were situated entirely within the county.

1899, 5th Ses. p. 296, first part of Sec. 4; 1897, 4th Ses. p. 20, Sec. 4.

Section 1714. Employment of Chainmen and Flagmen: Each chainman or flagman, employed by the county surveyor or his deputy on an official survey shall, before commencing the duty assigned to him, take an oath (or affirmation) to faithfully and impartially execute the duties assigned to him, which oath (or affirmation) the county surveyor is authorized to administer. If a party for whom a survey is made does not furnish the chainman and markers, the surveyor may employ such necessary assistants, and receive a reasonable hire for all employed.

1899, 5th Ses. p. 296, last part of Sec. 4; 1897, 4th Ses. p. 20, Sec. 4.

Section 1715. Surveying County Boundaries: Whenever it shall be ordered by an act of the legislature to establish the boundary line between two counties, the board of county commissioners of each county interested in the boundary, shall authorize the county surveyors of said counties to jointly establish said boundary and firmly plant and mark corners and monuments of imperishable material, also to prepare plats and field notes jointly, and one copy of such plats and field notes shall be filed with the auditor and recorder of each of the counties so interested.

1899, 5th Ses. p. 297, Sec. 6; 1897, 4th Ses. p. 21, Sec. 6.

Section 1716: Commissioners to Procure U. S. Plats:

The board of county commissioners shall when necessary and recommended by the county surveyor, procure from the surveyor general of the United States for the state of Idaho, a certified copy of the plats and extract of the field notes of the United States surveys or any part thereof lying within the county, and file the same in the office of the county surveyor. No county surveyor, thus provided with plats and notes, when called upon to execute any survey, shall make any charge for furnishing the same. A copy from said plats and notes, certified to by the county surveyor, shall be legal evidence in any court.

1899, 5th Ses. p. 297, Sec. 7; 1897, 4th Ses. p. 21, Sec. 7.

Section 1717. Surveys Ordered by Commissioners, who to Make: All surveys, maps and plats ordered by the board of county commissioners shall be made by the county surveyor, unless the office of county surveyor shall be vacant; in such case the surveyor appointed by the board shall be governed by these provisions in the performance of his duty.

1899, 5th Ses. p. 297, Sec. 8; 1897, 4th Ses. p. 21, Sec. 8.

Section 1718. Commissioners to Furnish Blanks, Etc.: The board of county commissioners shall furnish the county surveyor with all necessary blanks, record books, plat books, and stationery for the keeping of notes and records, as herein required.

1899, 5th Ses. p. 297, Sec. 9; 1897, 4th Ses. p. 21, Sec. 9.

CLERK OF THE DISTRICT COURT. . . .

Section 1719. General Reference: The duties of the clerk of the district court are designated in Title II, Chapter IX, of this Code.

New Sec. by Commission.

AUDITOR.

Section 1720. Must Draw Warrants, when: The auditor must draw warrants on the county treasurer in favor of all persons entitled thereto, in payment of all claims and demands chargeable against the county which have been legally examined, allowed and ordered paid by the board of commissioners; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal.

1887 R. S. Sec. 2005.

CONTROL OVER WARRANTS: The charge for publishing the delinquent tax list under a contract with the assessor and tax collector does not bring such charge within the meaning of the phrase "amounts fixed by law," as used in the above section. The auditor cannot draw a warrant for such claim upon its being audited and allowed by the assessor and tax collector.—*Jolly et al. v. Woodworth, Auditor (Idaho)*, 42 Pac. 512.

When a claim for services has been

examined and allowed by the county commissioners, the auditor cannot refuse to draw warrants for the payment thereof on the ground that the services were never rendered.—*McFarland v. McCowen*, 98 Cal. 329, 33 Pac. 113; there can be no issue of fact determined by the auditor, and when the commissioners have approved bills which they have a legal right to approve, the auditors should, without questioning the merits of the bills, issue warrants therefor.—*State v. Headlee*, 17 Wash. 637, 50 Pac. 493.

Section 1721.]Warrants must Specify, what: All warrants must distinctly specify the liability for which they are drawn, and when it accrued.

1887 R. S. Sec. 2006.

Section 1722. Settlement with Debtors to the County: The auditor must examine and settle the accounts of all persons indebted to the county, or holding moneys payable into the county treasury, and must certify the amount to the treasurer, and upon the presentation and filing of the treasurer's receipt therefor, give to such person a discharge and charge the treasurer with the amount received by him.

1887 R. S. Sec. 2007.

Section 1723. Must Keep Accounts Current with Treasurer: The auditor must keep accounts current with the treasurer, and when any person deposits with the auditor any receipt given by the treasurer for any money paid into the treasury, the auditor must file such receipt and charge the treasurer with the amount thereof.

1887 R. S. Sec. 2008; Compiled Laws 1875, p. 563, Sec. 25.

Section 1724. Manner of Issuing Warrants: The auditor shall have prepared, in separate series, warrant blanks for each year. They must be numbered consecutively, and must show the year against the revenue of which they are to be issued. He shall begin the use of a new series of warrants on the second Monday in April of each year. All warrants issued by the auditor shall be upon the warrant blanks of the series for the year chargeable with the amount for which such warrant is issued, and the number, date, and amount of each, and the name of the person to whom payable, and the purpose for which drawn must be stated thereon. When the amount for which a warrant is to be drawn is greater than the sum of two hundred dollars, the auditors shall issue therefor warrants in sums of two hundred dollars or fraction thereof, unless there is cash in the county treasury in the fund against which such warrant is drawn for the payment of the same on presentation. All warrants must, at the time they are issued be registered by the auditor.

1899, 5th Ses. p. 397, amending laws of 1887, R. S. Sec. 2009.

Section 1725. Auditor's Report to State Auditor: Every county auditor must, on or before the second Monday in April each year, prepare, in duplicate, an exact and full statement, under oath, of the financial condition of his county for the fiscal year last preceding, one of which statements shall be filed in the office of the state auditor, the other with the board of county commissioners of the county. Such statement must clearly set forth the following:

'The total assessed valuation of the county for each year; the amount of the tax levy on each one hundred dollars' valuation for each several purpose for which levied, stating them, and the total amount of the tax levy for each year.

Therefrom shall be deducted the amount of double assessments, un-

collected taxes or other credits ordered by the board of county commissioners to be given to the assessor on account of the roll for that year, showing the actual amount of revenue obtainable from such roll.

Thereafter shall follow a statement in which shall be charged to each separate fund for which a levy was made, the proportion of net revenue which may be obtained for such fund from such levy, and also all amounts ordered to be transferred thereto as provided by law and also all revenues received for such year for each of said funds from sources other than property tax. There shall be credited against such revenue shown in each fund the amount allowed by the board of county commissioners, for which warrants have been ordered in such year, payable out of such fund; and which amounts shall be classified into warrants drawn and paid; warrants drawn and not paid; and warrants ordered and not drawn; there shall also be credited, in the statement of the appropriate funds, the amount paid on account of court orders; witness certificates; bonds and coupons; state, ad valorem, wagon road or other levies; current expense; road; bridges; general school purposes; interest on warrants paid; and generally, of all amounts paid out of the revenues of the year on account of each of the several funds, or transferred therefrom as provided by law; and the amount of delinquent tax due to each of such funds from the revenue of such year; the amount of cash in the treasury to the credit of each of such funds shall be credited therein; and said statement of each of said funds shall be balanced, as the condition thereof shall require, by carrying to the credit of such account "surplus revenue over expenditures" or by debiting the account with "deficit of revenue to meet expenditures."

The auditor must, at the close of such report, make recapitulation of the total revenues and expenditures for the year, and must compute the exact levy which would have been required on the net amount of the assessment roll for the year, to pay such expenditures and make a statement of the same.

A further showing shall be made in said statement, as follows: A statement of the actual amount and character of the bonded indebtedness of the county, if any, and the rate of interest thereon, together with the amount of the floating indebtedness, at the date of said statement; the amount of cash on hand in the treasury, applicable to the payment thereof. There shall be a detailed showing made in said statement as to the amount of expenditure made in said year in said county on account of current expense, other than for roads, and bridges, wherein the total amount of such expenditures shall be debited and a credit made against the same for the several classified items of expenditure, in the amount shown by each; such classification and summarized detail to be nearly as practicable as follows:

To total amount of expenditure for the year payable out of current expense fund, \$.....

By care of poor: Medical attendance, \$.....; burials, \$.....; temporary aid, \$.....

By salary, or other compensation of each; Actual expenses being a county charge; (showing separately under sheriff for deputies and

jailors; board and care of prisoners) office expenses; blanks; stationery; furniture; and supplies, amount for each.

District court: By defense criminals, \$.....; witness fees, \$.....; juror fees, \$.....

Justice courts: By fees of justices of the peace, \$.....; constables, \$.....; jurors, \$.....

Court house: By merchandise, \$.....; repairs, \$.....; janitor, \$.....; fuel, \$....., etc., and generally, such a summarized detail as shall make a comprehensive statement of the full amount and nature of the expenditures in said fund, for the fiscal year included in said statement.

1901, 6th Ses. p. 294, Sec. 1.

Section 1726. Other Duties: The auditor must discharge such other duties as are required by law.

1887 R. S. Sec. 2011.	Duty respecting estrays: Sec. 740.
Duty respecting state lands: Sec. 463.	Duty respecting school money: Sec. 1042.
Duty respecting militia: Sec. 526.	Duty respecting road funds: Sec. 1183.
Duty respecting weights and measures: Secs. 604, 605, 606, 609.	

RECORDER.

Section 1727. Must Procure Books of Record: The recorder must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of commissioners. He has the custody of and must keep all books, records, maps, and papers deposited in his office.

1887 R. S. Sec. 2023.	Judgment liens: Civil Code, Secs. 2853, 2854, 2855.
Duty respecting chattel mortgages: Civil Code, Sec. 2821.	

Section 1728. What to be Recorded: He must, upon the payment of his fees for the same, record separately, in large and well bound separate books, in a fair hand:

1. Deeds, grants, transfers and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate and leases which have been acknowledged or proved;
2. Certificates of marriage and marriage contracts;
3. Wills admitted to probate;
4. Official bonds;
5. Notices of mechanics' liens;
6. Transcripts of judgments which by law are made liens upon real estate;
7. Notices of attachments upon real estate;
8. Notices of pendency of an action affecting real estate, the title thereto or possession thereof;
9. Instruments describing or relating to the separate property of married women;
10. Notices of pre-emption claims;
11. Notices of water rights;

12. Such other writings as are required or permitted by law to be recorded.

1887 R. S. Sec. 2024; Compiled Laws 1875, p. 558, Sec. 9.

Section 1729. Indexes to be Kept: Every recorder must keep:

1. An index of deeds, grants, and transfers, labeled, "Grantors," each page divided into four columns, headed respectively: "Names of grantors," "Names of grantees," "Date of deeds, grants, or transfers," and "Where recorded;"

2. An index of deeds labeled "Grantees," each page divided into four columns, headed respectively: "Names of grantees," "Names of grantors," "Names of grantees," "Date of deeds, grants, or transfers," and "Where recorded;"

3. An index of mortgages, labeled: "Mortgagors of real property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagors," "Names of mortgagees," "Date of mortgages," "Where recorded," "When discharged;"

4. An index of "Mortgagees," labeled: "Mortgagees of real property," with the pages thereof divided into five columns, headed respectively: "Names of mortgagees," "Names of mortgagors," "Date of mortgages," "Where recorded," "When discharged;"

5. An index of release of mortgages, labeled: "Releases of mortgages of real property—mortgagors," with the pages thereof divided into six columns, headed respectively: "Parties releasing," "To whom releases are given," "Date of releases," "Where releases are recorded," "Date of mortgages released," "Where mortgages released are recorded;"

6. An index of releases of mortgages, labeled respectively: "Releases of mortgages of real property—mortgagees," with the pages thereof divided into six columns, headed respectively: "Parties whose mortgages are released," "Parties releasing," "Date of releases," "Where recorded," "Date of mortgages released," "Where mortgages released are recorded;"

7. An index of powers of attorney, labeled "Powers of attorney," each page divided into five columns headed respectively: "Names of parties executing the powers," "To whom powers are executed," "Date of powers," "Date of recording," "Where powers are recorded;"

8. An index of leases, labeled "lessors," each page divided into four columns, headed respectively: "Names of lessors," "Names of lessees," "Date of leases," "When and where recorded;"

9. An index of leases, labeled "lessees," each page divided into four columns, headed respectively: "Names of lessees," "Names of lessors," "Date of leases," "When and where recorded;"

10. An index of marriage certificates, labeled "Marriage certificates—men," each page divided into six columns, headed respectively: "Men married," "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded;"

11. An index of marriage certificates labeled "Marriage certificates—women," each page divided into six columns, headed respect-

ively: "Women married" (and under this head placing the family names of the women), "To whom married," "When married," "By whom married," "Where married," "Where certificates are recorded;"

12. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—assignors," each page divided into five columns, headed respectively: "Assignors," "Assignees," "Instruments assigned," "Date of assignments," "When and where recorded;"

13. An index of assignments of mortgages and leases, labeled "Assignments of mortgages and leases—assignees," each page divided into five columns, headed respectively: "Assignees," "Assignors," "Instruments assigned," "Date of assignments," "When and where recorded;"

14. An index of wills, labeled, "Wills," each page divided into four columns, headed respectively: "Names of testators," "Date of wills," "Date of probate," "When and where recorded;"

15. An index of official bonds, labeled "Official bonds," each page divided into five columns, headed respectively: "Names of officers," "Names of offices," "Date of bonds," "Amount of bonds," "When and where recorded."

16. An index of notices of mechanics' liens, labeled "Mechanics' liens," each page divided into four columns, headed respectively, "Parties claiming liens," "Against whom claimed," "Notices," "When and where recorded."

17. An index to transcripts of judgment, labeled "Transcripts of judgments," each page divided into seven columns, headed respectively, "Judgment debtors," "Judgment creditors," "Amount of judgments," "Where recovered," "When recovered," "When transcript filed," "When judgment satisfied."

18. An index of attachments, labeled "Attachments," each page divided into six columns, headed respectively, "Parties against whom attachments are issued," "Parties issuing attachments," "Notices of attachments," "When recorded," "Where recorded," "When attachments discharged;"

19. An index of notices of the pendency of actions, labeled "Notices of actions," each page divided into three columns, headed respectively, "Parties to the actions," "Notices when recorded," "Where recorded;"

20. An index of the separate property of married women labeled "Separate property of married women," each page divided into five columns, headed respectively "Names of married women," "Names of their husbands," "Nature of instrument recorded," "When recorded," "Where recorded;"

21. An index of possessory claims, labeled "Possessory claims," each page divided into five columns, headed respectively, "Claimants," "Notices," "When received," "Date of notices," "When and where recorded."

22. An index of homesteads, labeled "Homesteads," each page divided into five columns, headed respectively, "Claimants," "Date of

declaration," "When and where recorded," "Abandonment," "When and where recorded."

23. An index of agreements and bonds affecting the title of real property, labeled, "Real property agreements," each page divided into four columns, headed respectively, "Vendors," "Vendees," "Date of agreement," "When and where recorded;"

24. An index of mining claims, labeled "Mining claims," each page divided into five columns, headed "Locators," "Name of claim," "Date of location," "When filed for record," "Where recorded;"

25. An index of water rights, labeled "Water rights," each page divided into four columns labeled "Locators," "Date of notice," "When filed for record," "Where recorded;"

26. A general index of all papers to be entered as they are filed.

1887 R. S. Sec. 2025; Compiled Laws 1875, p. 558, Sec. 11.

Section 1730. Two or More Indexes in Same Volume: The recorder may keep in the same volume any two or more of the indexes required to be kept, but the several indexes must be kept distinct from each other, and the volume distinctly marked on the outside in such way as to show all the indexes kept therein. The names of the parties in the first column in the several indexes must be arranged in alphabetical order, and when a conveyance is executed by the sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index under the name of the latter, and when an instrument is recorded to which an executor, administrator or trustee is a party, the name of such executor, administrator or trustee, together with the name of the testator or interstate, or party for whom the trust is held, must be inserted in the index under the name of the latter.

1887 R. S. Sec. 2029; Compiled Laws 1875, p. 561, Sec. 12.

Section 1731. Record of Certificates of Sale: The recorder must keep in his office a book to be called "Certificates of sale," and record therein all certificates of sale of real estate sold under execution or under order made in any judicial proceeding. He must also prepare an index thereto, in which in separate columns he must enter the names of the plaintiff in the execution, the defendant in the execution, the purchaser at the sale, and the date of the sale.

1887 R. S. Sec. 2026.

Section 1732. To Record Decrees Affecting Real Property: The recorder must file and record with the record of deeds, grants and transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situate in the county of which he is recorder.

1887 R. S. Sec. 2027.

Section 1733. Filing of Decree Imparts Notice: Every such certified copy of partition from the time of filing the same with the recorder for record, imparts notice to all persons of the contents thereof; and subsequent purchasers, mortgagees, and lien

holders, purchase and take with like notice and effect as if such copy of decree was a duly recorded deed, grant or transfer.

1887 R. S. Sec. 2028.

Section 1734. Chattel Mortgage Book: The recorder shall keep a book in which shall be entered a minute of all mortgages of personal property; such book shall be ruled off into separate columns, with heads as follows: "Time of reception," "Name of mortgagor," "Date of instrument," "Amount secured," "When due," "Property mortgaged," "Before whom sworn to and acknowledged," and "Remarks." And the proper entry shall be made under each of such heads.

1899, 5th Ses. p. 121, part of Sec. 2; 1887 R. S. Sec. 3387.
1891, 1st Ses. p. 181, amending laws of

Section 1735. Duty on Receipt of Instrument: When any instrument, paper or notice authorized by law to be recorded, is deposited in the recorder's office for record, the recorder must endorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and at once enter it in the proper index, and must record the same without delay, together with the acknowledgments, proofs and certificates, written upon or annexed to the same, with the plats, surveys, schedule and other papers thereto annexed, in the order and as of the time when the same was received for record, and must note at the foot of the record the exact time of its reception, and the name of the person at whose request it was recorded.

1887 R. S. Sec. 2030; Compiled Laws 1875, p. 561, Sec. 13.

Section 1736. Recorded Instrument to be Delivered: He must also indorse upon each instrument, paper or notice, the book and pages in which it is recorded. And must thereafter deliver it upon request to the party leaving the same for record, or to his order.

1887 R. S. Sec. 2031; Compiled Laws 1875, p. 561, portion of Sec. 14.

Section 1737. Must make Searches: The recorder must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices, the dates thereof, the year, month, day, hour, and minute they were filed, the extent to which they purport to affect the property to which they relate, and the book and pages where they are recorded.

1887 R. S. Sec. 2032; Compiled Laws 1875, p. 561, Sec. 15.

Section 1738. Fees to be Prepaid: He is not bound to record any instrument or file any paper or notice, or furnish any copies, or to render any service connected with his office, until the fees for the same, as prescribed by law, are, if demanded, paid or tendered.

1887 R. S. Sec. 2034; Compiled Laws 1875, p. 563, Sec. 23.

Section 1739. Damages for Neglect of Duty: If any recorder to whom an instrument, proved or acknowledged, according to law, or any paper or notice which may by law be recorded, is delivered for record:

1. Neglects or refuses to record such instrument, paper, or notice within a reasonable time after receiving the same;
2. Records any instruments, papers, or notices untruly, or in any other manner than as hereinbefore directed;
3. Neglects or refuses to keep in his office such indexes as are required by this chapter, or to make the proper entries therein;
4. Neglects or refuses to make the searches and to give the certificate required by this chapter; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested;
5. Alters, changes, or obliterates any records deposited in his office, or inserts any new matter therein;—he is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby.

1887 R. S. Sec. 2033; Compiled Laws 1875, p. 562, Sec. 16.

Section 1740. Records Open to Inspection: All books of record, maps, charts, surveys, and other papers on file in the recorder's office, must, during office hours, be open for the inspection of any person who may desire to inspect them, and may be inspected without charge; and the recorder must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

1887 R. S. Sec. 2035; Compiled Laws 1875, p. 563, Sec. 19.

RIGHT TO EXAMINE RECORDS: An officer having charge of public records is the legal custodian of the same and is responsible for their safe keeping and may make and enforce proper regulations consistent with the public right for the use of them; but they are public property for public use and he has no legal authority to exclude any of the public from access to, and

examination and inspection thereof during office hours, and he has no right to demand any fees or compensation for the privilege of access to the records, or for examination thereof; he has no exclusive right to search the records and cannot deny that privilege to any citizen.—*Burton v. Tuite*, 78 Mich. 363, 7 L. R. A. 73, 44 N. W. 282; *Upton v. Catlin*, 17 Colo. 546, 17 L. R. A. 282, 31 Pac. 172.

Section 1741. Bond of Auditor and Recorder, Where Filed: The bonds of the recorder and auditor must be filed by the probate judge in the probate court of the county, and a copy thereof duly recorded by the county recorder and when so recorded, fully attested by the probate judge.

1887 R. S. Sec. 2013.

PROSECUTING ATTORNEY.

Section 1742. Who Eligible. Can Hold no Other Office: No person shall be eligible to the office of prosecuting attorney who is not an attorney and counselor at law duly licensed to practice as such in the district courts of the state. No prosecuting attorney shall hold any other county or state office during his term of office as prosecuting attorney.

1899, 5th Ses. p. 24, Sec. 1; 1897, 4th Ses. p. 74.

State v. Corcoran (Idaho), 61 Pac. 1034.

Note by Commission: The words "prosecuting attorney" have been sub-

stituted for "county attorney" in this and the succeeding sections. No such officer as "county attorney" is authorized by the constitution. Const. Art. V, Sec. 18.

Section 1743. Duties of Prosecuting Attorney: It is the duty of the prosecuting attorney: 1. To prosecute or defend all actions, applications or motions, civil or criminal, in the district court of his county in which the people or the state or the county are interested, or a party; and when the place of trial is changed in any such action or proceeding to another county, he must prosecute or defend the same in such other county. 2. To prosecute all criminal actions before the probate and justices' courts of his county when called upon by said courts, and upon the request of magistrates to conduct criminal examinations which may be had before such magistrates, and prosecute or defend all civil actions before the probate and justices' courts of the county, in which the people or the state or the county is interested or a party. 3. To give advice to the board of county commissioners, and other public officers of his county, when requested in all public matters, in which the people or the state or the county is interested or a party. 4. To attend, when requested by any grand jury for the purpose of examining witnesses before them; to draw bills of indictments, informations, and accusations; to issue subpoenas and other process requiring the attendance of witnesses. 5. On the first Monday of each month to settle with the auditor and pay over all money collected, or received by him during the preceding month; belonging to the county or state, to the county treasurer and take his receipt therefor, and to file on the first Monday of January in each year, in the office of the auditor of his county, an account verified by his affidavit, of all money received by him during the preceding year, by virtue of his office for fines, forfeitures, penalties or costs, specifying the name of each person from whom he receives the same, the amount received from each, and the cause for which the same was paid. 6. To perform all other duties required of him by any law.

1899, 5th Ses. p. 25, Sec. 3; 1897, 4th Ses. p. 75.

County treasurer may bring action for money received: Sec. 1687.

It is the duty of the prosecuting at-

torney to prosecute foreclosure cases within his county where the state is a party.—State v. Fitzpatrick (Idaho), 51 Pac. 112.

Section 1744. When Court to Appoint Attorney: When there is no prosecuting attorney for the county or when he is absent from the court, or when he has acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged, and for which he is to be tried on a criminal charge, or when he is unable to attend to his duties, the district court may, by an order entered in its minutes, stating the cause therefor appoint some suitable person to perform for the time being, or for the trial of such accused person, the duties of such prosecuting attorney, and the person so appointed has all the powers of the prosecuting attorney, while so acting as such.

1899, 5th Ses. p. 25, Sec. 2; 1897, 4th State v. Corcoran (Idaho), 61 Pac. Ses. p. 74. 1034.

Section 1745. Must Receipt for Money Received:

When any prosecuting attorney receives any money for fines, for forfeitures, penalties or costs, he must deliver to the person paying the same, duplicate receipts therefor one of which must be filed by such person in the office of the county auditor.

1899, 5th Ses. p. 25, Sec. 4; 1897, 4th Ses. p. 75.

Section 1746. Restrictions on Prosecuting Attorney:

No prosecuting attorney must receive any fee or reward for, or on behalf of any prosecutor, or other individual for services in any prosecution, or business to which it is his official duty to attend or discharge; nor be concerned as attorney or counsel, for either party other than for the state, people or county, in any civil action depending upon the same state of facts, upon which any criminal prosecution commenced, but not determined depends, and no law partner of any prosecuting attorney must be engaged in the defense of any suit, action, or proceeding, in which said prosecuting attorney appears on behalf of the people, state or county.

1899, 5th Ses. p. 25, Sec. 5; 1897, 4th Ses. p. 75.

Section 1747. Is Legal Adviser to Board of Commissioners: The prosecuting attorney is the legal adviser of the board of commissioners; he must attend their meetings when required and must attend and oppose all claims and accounts against the county when he deems them unjust or illegal.

1899, 5th Ses. p. 26, Sec. 6; 1897, 4th Ses. p. 76.

Section 1748. Prosecution of Offenses; General Reference: The powers and duties of the prosecuting attorney in relation to the prosecution of offenses on information and on indictment are designated in Title XXIII, Chapter CCXXIX of the Penal Code.

New Sec. by Commission.

CHAPTER LXV.

PRECINCT OFFICERS.

Section.

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1759. Liability for failure to pay over money.

1760. Liable on bond for official acts.

1761. Cannot appoint deputy; exception.

GENERAL PROVISIONS.

Section 1749. Officers of a Precinct Enumerated:

The officers of precincts are two justices of the peace, one constable,

and such other inferior and subordinate officers as are provided for elsewhere in this Code or by the board of commissioners.

1887 R. S. Sec. 1813.

Registrar: Sec. 806.

Election officers: Sec. 831.

Section 1750. Who Eligible to Precinct Office: No person is eligible to a precinct office who is not on the day of his appointment or election, an elector of the precinct in which the duties of the office are to be exercised, or for which he is elected.

1887 R. S. Sec. 1811; corrected by 5th Ses. p. 34, Sec. 5 (Sec. 268 of this Commission to conform to laws of 1899, Code).

Section 1751. Bonds, Amount of: Justices of the peace and constables must execute official bonds, each in the sum of not less than five hundred nor more than ten hundred dollars, to be fixed by the board of county commissioners.

1887 R. S. last part of Sec. 1828.

JUSTICE OF THE PEACE.

Section 1752. Residence: Every justice of the peace shall reside in the precinct in which his court is held.

1887 R. S. Sec. 3885.

Section 1753. Duties: Justices of the peace must perform such duties as are prescribed in the Code of Civil Procedure, and such other duties as are prescribed by law.

1887 R. S. Sec. 2092.

Jurisdiction: Code Civil Proc. Chap. CXX.

Public offenses prosecuted by Indictment or information: Penal Code, Chap. CCXVII.

Civil proceedings in justice courts: Code Civil Proc. Title XVII.

Proceedings in probate and justice courts: Penal Code, Chap. CCXXXVI.

CONSTABLE.

Section 1754. Must Attend Court and Serve Process: Constables must attend the courts of justices of the peace within their precincts whenever so required, and within their counties execute, serve and return all process and notices directed or delivered to them by a justice of the peace of such county, or by any competent authority.

1887 R. S. Sec. 2090; Compiled Laws 1875, p. 570, Sec. 25.

AUTHORITY OF CONSTABLE: A constable has no authority to serve process beyond the limits of his county.—Ex parte Dixon, 1 Utah, 193.

In certain cases, constables may execute and return process issued out of probate courts, and may justify under it, if it is valid on its face.—Coombs v. Collins (Idaho), 57 Pac. 310.

Section 1755. Conservators of the Peace: Constables are conservators of the peace within their respective precincts.

1887 R. S. Sec. 2097; Compiled Laws 1875, p. 571, Sec. 31.

Section 1756. Governed by Laws Relating to Sheriff: In the execution, service and returns of orders, writs, process, and papers, where there are no positive provisions of law prescribing his duties, he must be governed by the laws relating to sheriffs, so far as they are applicable.

1887 R. S. Sec. 2091; Compiled Laws 1875, p. 570, Sec. 26.

Sheriffs: Sec. 1644 et seq.

Section 1757. Liability for Neglect to Make Return:

For failing or refusing to return, as required by law, any writ or process issued by a justice of the peace, or any paper connected with any suit or proceeding before such justice, the constable is liable to the party at whose instance the suit or process has issued, or for whom the paper is to be served in the sum of fifty dollars, to be recovered of him and his sureties by motion, before a justice of the peace of his precinct, five days notice of the motion having been given.

1887 R. S. Sec. 2093; Compiled Laws 1875, p. 570, Sec. 27.

Section 1758. Liability for Neglect to Levy: If any constable to whom any writ of execution is delivered, neglects or refuses after being required by the creditor, his agent or attorney, to levy upon or sell any property of the defendant, which is subject to execution, he and the sureties on his bond shall be liable to the creditor for the value of such property.

1887 R. S. Sec. 2094; Compiled Laws 1875, p. 571, Sec. 28.

Section 1759. Liability for Failure to Pay Over Money: If any constable neglects or refuses to pay over any money in his hands, which he has collected or received in his official capacity, when demanded by the person entitled thereto, the amount thereof, with thirty-five per cent damages and interest at the rate of ten per cent. per month from the time of demand may be recovered from such constable and his sureties.

1887 R. S. Sec. 2095; Compiled Laws 1875, p. 571, Sec. 29.

Section 1760. Liable on Bond for Official Acts: For any official act or any omission to perform any duty required of him by law, the constable is liable on his bond to any person injured.

1887 R. S. Sec. 2096; Compiled Laws 1875, p. 571, Sec. 30.

Section 1761. Cannot Appoint Deputy; Exception: No constable of any county of this state can appoint or deputize any person to perform any of the duties of his office except in cases of riots or making arrests.

1887 R. S. Sec. 2098; Compiled Laws 1875, p. 787.

DEPUTIES: A constable can only appoint a deputy for a specific purpose and cannot make an appointment permanent to discharge the general duties of his office.—Kaysen v. Steele 13 Utah, 260, 44 Pac. 1042; Prickett v. Cleek, 13 Or. 415, 11 Pac. 49. There can be no legal service by constable's

deputy, unless the record shows that he was acting under an appointment for the purpose.—Prickett v. Cleek supra. The appointment of a deputy should not be made unless there is a probability that a party charged with a crime will escape or other damage will be done.—Cunningham v. Boswick (Colo. App.), 43 Pac. 151.

CHAPTER LXVI.

SALARIES AND FEES OF OFFICE.

Section.

SALARIES.

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1784. Officers to report and account for fees.

SALARIES.

Section 1762. Manner of Payment: The salaries of county officers as full compensation for their services must be paid quarterly from the county treasury, upon the warrants of the county auditor, and before being paid to such officers, must be allowed and audited by the board of commissioners as other claims against the county.

1899, 5th Ses. p. 405, first part of Sec. 1.

Section 1763. Disposition of Fees: No officer or deputy shall retain out of any money, in his hands belonging to the county, any salary, but all actual and necessary expenses incurred by any county officer or deputy in the performance of his official duty shall be a legal charge against the county, and may be retained by him out of any fees which may come into his hands. All fees which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into the county treasury at the end of each quarter. He shall at the end of each quarter file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers, showing all expenses incurred, and all fees received, which must be audited by the board as other accounts.

1899, 5th Ses. p. 405, last part of Sec. 1.

EXPENSE OF AN OFFICER, WHEN A LEGAL CHARGE AGAINST THE COUNTY: Items in a claim or account against the county must be specifically set forth, with such certainty that each item can be identified; and any item for expense incurred by an officer must be so set forth that it can be ascertained from the statement thereof that it was necessary. The law contemplates and requires this for the purpose of protecting the public,

and to enable any taxpayer who may desire to do so to investigate and ascertain the correctness of any and all items.—Clyne v. Bingham Co. (Idaho), 60 Pac. 76. The expense of a sheriff in serving a subpoena out of the state or out of his county is not a proper charge against the county. The living expenses which are not merely incidental to the performance of an official act, such as items for bed and board, are not legal charges against the county.—Clyne v. Bingham Co., supra.

Section. 1764. Salaries, How Fixed. Limits: It shall be the duty of the board of county commissioners of each county, at its regular session in April next preceding any general election, to fix the annual salaries of the several county officers, except prose-

cuting attorneys, to be elected at said general election, for the term commencing on the second Monday in Janury next after said meeting, and in no case shall the salary of any county officer be less than the lowest amount hereinafter designated for such officer, and in no case shall it be higher than the highest amount hereinafter designated for such officer, provided that the annual salaries of the several county officers, except prosecuting attorney, for the term commencing on the second Monday in January, 1899, shall be fixed at the April, 1899, session of said board of county commissioners. Provided further that the salary so fixed shall be in force from and after the second Monday in April, 1899. The salary of prosecuting attorney shall be fixed at the regular July session next preceding each general election.

The sheriff shall receive a salary of not less than eight hundred dollars (\$800) per annum, and not to exceed two thousand dollars (\$2,000), per annum; he shall be allowed in addition to such salary as fixed by said board, the actual and necessary expenses for care of each prisoner confined in the county jail.

The clerk of the district court and ex-officio auditor and recorder shall receive a salary of not less than eight hundred dollars (\$800) per annum and not to exceed two thousand dollars (\$2000) per annum.

The assessor and ex-officio tax collector shall receive a salary of not less than eight hundred dollars (\$800) per annum, and not to exceed three thousand dollars (\$3000) per annum.

The county treasurer shall receive a salary of not less than five hundred dollars (\$500) per annum and not to exceed fifteen hundred dollars (\$1500) per annum.

The prosecuting attorney shall receive a salary of not less than five hundred dollars (\$500) per annum and not to exceed fifteen hundred dollars (\$1500) per annum.

The probate judge shall receive a salary of not less than five hundred dollars (\$500) per annum and not exceed fifteen hundred dollars (\$1500) per annum.

The county superintendent of public instruction shall receive a salary of not less than two hundred and fifty dollars (\$250) per annum, and not to exceed twelve hundred dollars (\$1200) per annum.

The county surveyor shall receive a salary of not less than fifty dollars (\$50) per annum, and not to exceed eight hundred dollars (\$800) per annum.

The coroner shall receive a salary of not less than fifty dollars (\$50) per annum, and not to exceed three hundred dollars (\$300) per annum.

1899, 5th Ses. p. 406, Sec. 3.

Date of fixing salary of prosecuting attorney and maximum and minimum amount fixed by Const. Art. V. Sec. 18.

For a discussion of maximum and minimum salary, under law prior to amendment of constitution, see *Hillard v. Shoshone Co.* 2 Idaho, 843, 27 Pac. 678.

SALARIES: The legislature has au-

thority to provide by statute the maximum and minimum salary of county officers, and may vest in boards of county commissioners the authority of determining the amount of salary to be paid in each county within the limit of such maximum and minimum salary, except salary of such county commissioner. Public policy forbids that any officer be empowered to fix

his own salary.—*Stookey v. Commissioners of Nex Perce County (Idaho)*, 57 Pac. 312. The act of March 2, 1899, known as the salary bill, provides a uniform basis throughout the state for the fixing of salaries of county officers, is general in its operation, does not delegate legislative functions, does not contravene the constitution, and is a valid act.—*Reynolds et al. v. Board of Com'rs Oneida County (Idaho)*, 59 Pac. 730; and the action of the board of commissioners in fixing such salaries is not final but subject to appeal.—*Reynolds et al. v. Board of Com'rs Oneida County*, *supra*.

The action of the County Commissioners in exercising their discretionary power in fixing such salary will not be disturbed on appeal except in case of clear abuse of such discretion.—*Reynolds et al. v. Board of Com'rs of Oneida County*, *supra*.

The salary fixed by law is intended to be full compensation for all services rendered by county officers to the

county in any manner whatsoever. And the county is prohibited from paying any other compensation.—*Raymond v. Commissioners Madison County*, 5 Mont. 103. Money paid a county officer by the county commissioners in excess of the salary allowed by law may be recovered back in a suit at law.—*Ada County v. Gess (Idaho)*, 43 Pac. 71 (cases cited).

WHO ENTITLED TO COMPENSATION: The incumbent of an office though only an officer *de facto* under color of right, is alone entitled to compensation for the services performed by him.—*Gorman v. County Commissioners of Boise County*, 1 Idaho, 655. But it is held in Wisconsin that an officer's right to the salary fixed for him is not affected by its payment to one not entitled to the office, he being ready and willing to discharge the duties of his office.—*Warden v. Bayfield County*, 87 Wis. 181, 58 N. W. 248.—See note to Section 26 of this Code.

Section 1765. Compensation of Commissioners. Actual and Necessary Expenses Defined: For the purpose of fixing the annual salaries of county commissioners in the several counties of the state of Idaho, the counties are hereby divided into three classes. The following counties shall constitute the counties of the first class, to-wit: Idaho, Kootenai, Latah, Nez Perce, Shoshone and Ada.

The following counties shall constitute counties of the second class, to-wit:

Bannock, Blaine, Bingham, Boise, Canyon, Elmore, Fremont, Oneida, Owyhee, and Washington.

The following counties shall constitute the counties of the third class, to-wit:

Bear Lake, Cassia, Custer, Lemhi and Lincoln.

The annual salaries of county commissioners in counties of the first class shall be seven hundred dollars, and all actual and necessary expenses; for counties of the second class five hundred dollars and all actual and necessary expenses; for counties of the third class, three hundred dollars, and all actual and necessary expenses.

The term "actual and necessary expenses" shall be deemed to include all traveling expenses incurred by any county officer when absent from his residence, in performance of the duties of his office.

1901, 6th Ses. p. 226, Secs. 1, 2 and 3.

SALARY AND EXPENSES: County commissioners shall receive as compensation the sum of six dollars each day actually and necessarily engaged in transacting county business, not to exceed five hundred dollars any one year, and all actual and necessary expenses incurred by them in the performance of their official duty.—*Stookey v. Com'mrs of Ne Perce*

County (Idaho), 57 Pac. 312; they can only receive this salary when actually and necessarily engaged in the transaction of county business, and upon an appeal from the order of the board in allowing their own salaries, it is not error for the court to receive evidence as to whether or not the board was so engaged in the transaction of county business during the days for which salary was allowed.—*Fisher v. Com-*

missioners of Bannock County (Idaho), 39 Pac. 552; Rankin v. Jauman (Idaho), 39 Pac. 1111. If a member of the board performs services for the county, either by order of the board, or upon his own motion, he does so as an in-
 dividual and his claim for compensation must be presented in the same manner and take the same course as the claim of any other person.—Rankin v. Jauman, *supra*.

vidual and his claim for compensation must be presented in the same manner and take the same course as the claim of any other person.—Rankin v. Jauman, *supra*.

Section 1766. Newly Created Counties: Counties hereafter created or organized, shall be governed by the provisions hereof, and the boards of county commissioners of such newly created or organized counties shall respectively fix and determine at their first meeting the salaries to be paid the several county officers as herein provided for.

1899, 5th Ses. p. 407, Sec. 5.

FEES.

Section 1767. Clerk of the District Court: The clerk of the district court may lawfully charge, demand and receive the following fees for services rendered in discharging the duties imposed on him by law :

For entering each suit on the register of actions, and making the necessary entires therein, twenty-five cents.

For issuing every summons, attachment, writ of injunction, or other original writ or process, fifty cents.

For issuing each subpoena, ten cents.

For filing each paper, fifteen cents.

For entering of record every motion, rule, order, default, non-suit, or discontinuance, twenty cents per folio.

For entering every cause on the calendar, and making a copy thereof for the bar, for each term of court, fifty cents.

For calling and swearing every jury, fifty cents.

For receiving and entering each verdict of a jury, fifty cents.

For entering every final judgment, for each folio, twenty cents.

For making a copy of any paper or record, including certificate, when required, for each folio, twenty cents.

For making and filing judgment roll, fifty cents.

For every certificate under seal, twenty-five cents.

For issuing every commission to take testimony, including certificate and seal, one dollar.

For taking down testimony or depositions, including oath, certificate and seal, for each folio, twenty cents.

For issuing every execution, or other final process, fifty cents.

For issuing every decree or order of sale, certificate and seal, for each folio, twenty cents.

For receiving and filing remittitur and accompanying papers from the supreme court, twenty-five cents.

For taking each bond required by law, twenty-five cents.

For acknowledgment of deed, or other instrument, including seal, twenty-five cents.

For swearing witnesses, ten cents.

For taking affidavit, including jurat, fifteen cents.

For entry of each case in judgment docket, fifty cents.

For entering satisfaction of judgment, twenty-five cents.

For filing and entering transcript of judgment from justice's court, fifty cents.

For all services not herein enumerated and of him required, or which he is called on to perform, such fees as are herein allowed for similar services.

For final papers of naturalization, five dollars, which includes all services in swearing witnesses, making minutes, recording, certifying, and issuing such papers under seal.

1899, 5th Ses. p. 116, Sec. 1; 1891, 1st Ses. p. 174.

Section 1768. Sheriff: The sheriff is allowed and may demand and receive the fees hereinafter specified:

First.—For serving a summons and complaint, or any other process by which an action or proceeding is commenced, on each defendant, one dollar.

Second.—For serving an attachment on property, or levying an execution, or executing an order of arrest, or order for the delivery of personal property, one dollar.

Third.—For his trouble and expense in taking and keeping possession of and preserving property under attachment or execution, or other process, such sum as the court may order: Provided, That no more than three dollars per diem be allowed to a keeper.

Fourth.—For taking a bond or undertaking in any case in which he is authorized to take the same, fifty cents.

Fifth.—For copy of and making return on any writ, process, or other paper, when demanded or required by law, for each folio, twenty cents.

Sixth.—For serving every notice, rule, or order, fifty cents.

Seventh.—For making and posting notices, and advertising property for sale on attachment or execution, or under any judgment or order of sale, exclusive of the costs of publication, each notice, twenty cents per folio.

Eighth.—For serving a writ of possession or restitution, putting a person in possession of premises and removing the occupant, three dollars.

Ninth.—For holding each inquest, a trial of right of property, to include all services in the matter except mileage, three dollars.

Tenth.—For serving a subjoena, for each witness summoned, twenty-five cents.

Eleventh.—For commissions for receiving and paying over money on execution or other process, when land or personal property has been levied on and sold, on the first one thousand dollars, two per cent.; on all sums above that amount one per cent.; but in no case of sale of real estate shall his commission exceed the sum of one hundred dollars, and when the amount of such sale is credited on the debt and no money is transferred, then one-half of such commission.

Twelfth.—For commissions for receiving and paying over money on execution without levy, or where lands or goods levied on are not sold, on the first one thousand dollars, one and one-half per cent.; and

one-half of one per cent. on all over that sum, but not to exceed in any case fifty dollars. The fees herein allowed for the levy of an execution, costs for advertising and percentage for making or collecting the money on execution, must be collected from the judgment debtor by virtue of such execution, in the same manner as the sum therein directed to be made.

Thirteenth.—For drawing and executing a sheriff's deed, including the acknowledgment, to be paid by the grantee before delivery, three dollars.

Fourteenth.—For executing a certificate of sale, exclusive of the filing and recording the same, one dollar.

Fifteenth.—For making every arrest in a criminal proceeding, two dollars.

Sixteenth.—For summoning each juror, twenty-five cents.

Seventeenth.—For serving a subpoena in a criminal action or proceeding, for each witness summoned, twenty-five cents.

Eighteenth.—For traveling, to be computed in all cases from the court house to serve any summons and complaint, or any other process by which an action or proceeding is commenced, notice, rule, order, subpoena, venire, attachment on property, to levy an execution, to post notice of sale, to sell property under execution or other order of sale, or execute an order of arrest, or order for the delivery of personal property, writ of possession or restitution, to hold inquest or trial of right of property, for each mile actually and necessarily traveled, in going only, thirty-five cents; for traveling to execute any warrant of arrest, subpoena, venire, or other process in criminal cases, or for taking a prisoner from prison before a court or magistrate, or for taking a prisoner from the place of arrest to prison, or before a court or magistrate, for each mile actually and necessarily traveled, in going only, thirty-five cents; for each additional prisoner taken at the same time, fifteen cents per mile; but if any two or more papers be required to be served in the same action or proceeding, civil or criminal, or be in the possession of the sheriff for service at the same time, and in the same direction, one mileage only shall be charged; and in serving a subpoena, venire, process or paper, when two or more jurors, witnesses, parties or persons to be served reside or are found in the same direction, traveling fees must be charged only for the most distant; and only one mileage per day must be charged for taking a prisoner from prison before a court or magistrate; and constructive mileage must in no case be charged or allowed. For all services arising in justices courts, the same fees as are allowed to constables for like services.

Nineteenth.—He shall be allowed a jailer, for whose services he shall be allowed the sum of not less than two dollars nor more than three dollars per day for each day a prisoner or prisoners are confined in the county jail of his county, to be fixed by the board of commissioners.

1899, 5th Ses. p. 117, Sec. 2; 1891, 1st Ses. p. 175.

Under the laws of Idaho, a sheriff

may recover fees allowed by law for services rendered by him, although he failed to require payment of such fees

in advance, but he must account to his county for all fees earned whether collected by him or not.—*Naylor v. Vermont Loan & Trust Company (Idaho)*, 55 Pac. 297.

SUBDIVISION 3: Keeper's fees can only be allowed by order of the court, and the prevailing party is not entitled to recover keeper's fees, as costs, that have not been so allowed.—*Berry v. G. V. B. Mining Company (Idaho)*, 51 Pac. 746; and where a deputy sheriff employs one as keeper of attached property, and the sheriff acquiesces for a long period of time, he cannot thereafter, and after the death of the deputy, repudiate such employment.—*Chenoweth v. Cameron (Idaho)*, 42 Pac. 503.

SUBDIVISION 11: Where a sheriff sold property under execution and col-

lected his percentage, he cannot on a redemption of the property charge such percentage again.—*Coeur d'Alene Hardware Company v. Cameron (Idaho)*, 42 Pac. 509.

SUBDIVISION 18: Under the provisions of Subdivision 18 of the above section, the sheriff is entitled to mileage for taking a prisoner from the place of arrest to prison or before a court or magistrate, regardless of whether such prisoner is arrested with or without a warrant. The execution of a warrant of arrest and taking of a prisoner from the place of arrest before a magistrate, are separate and distinct acts, and mileage should be allowed for each.—*Warner v. Fremont County (Idaho)*, 43 Pac. 327, and cases cited.

Section 1769. Probate Judge and Clerk: The probate judge may charge and collect the following fees: When sitting as a committing magistrate in preliminary examinations, three dollars; for the trial of criminal causes, five dollars; for issuing warrant of arrest, fifty cents; for taking bail after commitment, fifty cents; for examination of insane person, five dollars. The clerk of the probate court, or the probate judge acting as clerk, is allowed, and may demand and receive, the fees hereinafter specified: the same fees allowed the clerk of the district court or justice of the peace for the same services. For issuing letters testamentary, or of administration, or of guardianship, fifty cents; for writing and posting all the required copies of each notice required to be posted, fifty cents; for each notice, including all the copies, for publication and posting, in addition to costs of publication, fifty cents; for recording wills or other papers required by law to be recorded, for each folio, twenty cents; for copies of all papers or proceedings in the probate court, including certificate and seal, when required, for each folio, twenty cents; for entering each order, for each folio, twenty cents; for all other services, the same fees as are allowed the clerk of the district court for like services: Provided, That if upon the filing of the appraisement of any estate it appears that the whole estate is not of the value of one thousand dollars, no further clerk's fees must be charged.

1899, 5th Ses. p. 119, Sec. 3; 1891, 1st Ses. p. 178, Sec. 3.

A clerk of the probate court may be appointed by the probate judge, or he may act as his own clerk and in either case the clerk may charge and receive

the fees provided by law, but all fees so received must be accounted for and paid over to the county treasurer.—*Ada County v. Ryals (Idaho)*, 39 Pac. 556.

Section 1770. Recorder and Auditor: The county recorder and auditor is allowed, and may receive for his services, the following fees and compensation, to be paid him by the party procuring his services as recorder: For filing, indorsing and indexing every instrument, paper or notice, when the instrument, paper or notice is not for record, but to be kept on file, fifty cents; for recording every instrument, paper or notice, for each folio, twenty cents for copies of

any record or paper, for each folio, twenty cents; for each certificate under seal when required, twenty-five cents; for abstract of title and searching the records therefor, and for each conveyance or incumbrance certified, fifty cents; for entry of discharge of mortgage or other instrument on the margin of the record, witnessing and indexing the same, twenty-five cents; for recording every town plat or map, for first one hundred lots or less, three dollars and fifty cents; and for each additional lot, one cent; for taking acknowledgments, including seal, fifty cents; for filing, recording and indexing marriage certificates, one dollar; for administering to the locator the oath and certifying the same on the location notice of a mining claim, and for filing, recording and indexing each notice, two dollars; which which must be divided equally between him and his mining deputy, who receives such notice; for recording each mark or brand, fifty cents; for administering an oath, including jurat, twenty-five cents and certifying same when required, twenty-five cents additional; for all other services as recorder, not enumerated herein, the same fees allowed the clerk of the district court for like services.

As auditor:

When not otherwise provided by law;

For administering the oath, including a jurat, if required, twenty-five cents.

For each paper filed, ten cents.

For all other services as clerk of the board of county commissioners, such salary as the said board may provide, not exceeding in counties of the first class, \$200; second class, \$175; third class, \$150; fourth class, \$125; fifth class, \$100.

For making records or furnishing copies thereof, twenty cents per folio.

1899, 5th Ses. p. 119, Sec. 4; 1891, 1st Ses. p. 178, Sec. 4.

FEES FOR STATE TAXES: Under Section 7, Article VII, of the constitution, requiring all state taxes to be paid into the state treasury without deductions for commissions, or any other charges, the county auditor cannot charge a commission on state taxes collected in his county, and all statutes

allowing such charges are repealed.—Cuningham v. Moody, 2 Idaho, 862, 28 Pac. 395; Wickersham v. Manion (Idaho), 36 Pac. 700.

MINING DEPUTY: Where the by-laws of a mining district fix the fees to be allowed mining records different from that allowed by state statute, the latter must govern.—People v. Monk, 8 Utah, 35, 28 Pac. 1115.

Section 1771. Surveyor: The county surveyor shall be allowed fees for his services as follows: For the first corner established, \$1.00; for each additional corner 50 cents; for every survey less than eighty chains, \$2.50; for every chain over eighty chains, 3 cents per chain; for calculating the quantity of each tract of land, \$1.00; for recording field notes of each survey, 20 cents per folio for making a certified copy of field notes 20 cents per folio; for making or copying maps or plats, 50 cents per hour, for traveling to place of survey, for each mile in going only, 15 cents for surveying roads and county boundaries including the preparing and recording of plats and field notes, for each day necessarily engaged in field work, \$6.00; for sur-

veys or re-surveys of town lots, \$3.00 for the first lot, and \$1.00 for each additional lot.

1899, 5th Ses. p. 297, Sec. 10; 1897, 4th Ses. p. 22, Sec. 10.

Section 1772. Coroner Acting as Sheriff: The coroner must receive for all services rendered when acting as sheriff, the same fees allowed to sheriffs for similar services.

1887 R. S. last part of Sec. 2133.

Section 1773. Justice of the Peace: A justice of the peace may charge, demand and receive the following fees for services performed in discharge of the duties imposed upon him by law:

For filing each paper, fifteen cents; for issuing any summons, writ or process by which action is commenced, fifty cents; for entering such cause on his docket, including all docket entries before judgment, fifty cents; for subpoena to witness, twenty-five cents; for administering an oath or affirmation, including jurat and certificate, fifteen cents; for issuing writ of attachment, or of arrest, or for delivery of property, one dollar; for entering any final judgment, for each folio, twenty-five cents; for taking and approving any bond or undertaking directed by law to be taken or approved by him, fifty cents; for taking justification to bond or undertaking when required by law, after exception to sureties, fifty cents; for swearing a jury, fifty cents; for taking deposition per folio, twenty cents; for entering satisfaction of judgment, twenty-five cents; for copy of judgment, order, docket, proceedings, or paper in his office, per folio, twenty cents; for issuing commission to take testimony, fifty cents; for making up and transmitting transcript and papers on appeal, two dollars; for making up and transmitting papers on change of venue, including copy, certificate and order, one dollar; for issuing search warrant, fifty cents; for issuing an execution, fifty cents; for celebrating marriage and returning certificate to the recorder, five dollars; for all services and proceedings before a justice of the peace, in a criminal action or proceeding on examination, when an examination is not waived, or trial upon an issue of fact, six dollars; when an examination is waived or there is a plea of guilty, three dollars; for taking bail after commitment in criminal cases, fifty cents; for entering an action without process, fifty cents; for entering judgment by confession on only an affidavit as required in the district court, in full for all services before execution, one dollar.

1887, R. S. Sec. 2135.

Section 1774. Constable: A constable is allowed and may collect and receive for any services required of him by law, fees as follows:

For serving summons in civil cases, for each defendant, fifty cents; for summoning a jury before a justice of the peace, one dollar and fifty cents; for taking a bond required to be taken, fifty cents; for summoning each witness, twenty-five cents; for serving an attachment against the property of the defendant, one dollar; for receiving and taking care of property on execution, attachment or order, his actual necessary disbursements and expenses to be allowed by the justice who issued the

process, upon satisfactory proof that such charges are correct, not to exceed two dollars per day; for collecting all sums of money on execution, three per centum to be charged against the defendant in the execution; for serving a warrant or order, for the deliverey of personal property or making an arrest in civil cases, one dollar; constables must receive twenty cents per mile for each mile necessarily traveled, in going only, in such cases as sheriffs are authorized to receive mileage; for services in criminal cases, the same fees as sheriffs are authorized to receive for like services; for all other services, the same fees as are allowed sheriffs for similar services.

1887 R. S. Sec. 2136.

Sheriff's fees and mileage: Sec. 1768.

MILEAGE FEES: The above section was changed by the Commission so as to fix the mileage of a constable definitely at twenty cents per mile in accordance with the decision of the supreme court of Idaho in the case of *Ellis v. Bingham Co.* 60 Pac. 79. In this case, the court held, that the act of March 13, 1891 (Sec. 1768 of this Code), did not amend Sections 2126 and 2136 of the Rev. St. in so far as said sections relate to constables' fees and mileage, and the court further held in that case that constables are entitled

to mileage at the rate of twenty cents per mile for each mile necessarily traveled in going, only, from the place where the court is held, to serve process.

IN CRIMINAL CASES: An item in a constable's claim of account against a county for services in serving process in a criminal case must specify the court in which the action is pending, name the offense, the party served and place of service, so that the correctness of the item will *prima facie* appear from the claim itself.—*Ellis v. Bingham Co.* 60 Pac. 79.

GENERAL PROVISIONS RELATING TO FEES.

Section 1775. Cannot Charge Fees of Pensioners:

No judge or clerk of court, probate clerk, county auditor or any other county officer shall be allowed to charge any honorably discharged soldier or seaman or the widow, orphan or legal representative thereof any fee for administering any oath or giving any official certificate for the procuring of any pension, bounty or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher.

1899, 5th Ses. p. 242, Sec. 1; 1895, 3d Ses. p. 36.

Penalty for violating this section. Penal Code, Sec. 4683.

Section 1776. Fees Must be Prepaid; Exceptions:

The officers mentioned in this title are not in any case, except for the state or county, to perform any official services unless upon the prepayment of the fees prescribed for such services except as in the succeeding section provided by law; and on such payment the officer must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

1887 R. S. Sec. 2137.

Section 1777. No Fees in Habeas Corpus Proceedings:

No fee or compensation of any kind must be charged or received by any officer for duties performed or services rendered in proceedings in habeas corpus; nor shall any county officer charge any fee against, or receive any compensation whatever from the state for

any services rendered in any action or proceeding in which the state of Idaho, or any state board, or state officer in his official capacity, is a party.

1901, 6th Ses. p. 162.

Section 1778. Must Publish Table of Fees: Every officer whose fees are herein ascertained must publish and set up in his office fair tables of his fees, according to this chapter, within one month after he enters upon the duties of his office, in some conspicuous place, for inspection of all persons who have business in his office, upon pain of forfeiting for each day, a sum not exceeding twenty dollars, which may be recovered by any person by action before any justice of the peace of the same county, with costs.

1887 R. S. Sec. 2139.

Section 1779. Execution for Fees: If any clerk, sheriff, justice of the peace, or constable shall not have received fees which may be due him for services rendered in any suit or proceeding, he may have execution therefor, in his own name against the party from whom they are due, to be issued from the court in which the action is pending.

1887, R. S. Sec. 2140.

Section 1780. Folio, How Computed: The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every three figures necessarily used as a word. Any portion of a folio, when in the whole draught or paper, there is not a complete folio; and any excess over the last folio exceeding a quarter, shall be computed as a folio. The filing of a paper shall be construed to include the certificate of the same.

1887, R. S. Sec. 2141.

Section 1781. Mileage, More Than One Process: When any sheriff, constable, or coroner, serves more than one process in the same case, not requiring more than one journey from his office, he shall receive mileage only for the most distance service.

1887, R. S. Sec. 2142.

Section 1782. Attorney not Allowed Fee as Witness: No counselor or attorney at law in any case shall be allowed any fees for attendance as a witness in such case.

1887, R. S. Sec. 2143.

Section 1783. Itemized Statement of Fees; Receipt: Every officer upon receiving any fees for official duty or services, may be required by the person paying the same to make out in writing and deliver to such person a particular account of such fees, specifying for what they respectively accrued and shall receipt for the same; and if he refuses or neglects to do so, when required, or shall receive illegal fees, he shall be liable to the party, paying for three times the amount so paid.

1887, R. S. Sec. 2144.

Section 1784. Officers to Report and Account for Fees: All officers whose fees are herein provided for except precinct officers shall render an annual report, under oath, to the board of county commissioners of all fees received as such officer; and account for, and pay the same into the county treasury as provided by law.

1899, 5th Ses. p. 121, Sec. 7, Sub. 10, p. 180.
rewritten by Commission; 1891, 1st Ses.

CHAPTER LXVII.

COUNTY CHARGES.

Section.

1785. County charges to be audited.

Section.

1786. County charges enumerated.

Section 1785. County Charges to be Audited: Accounts for county charges of every description must be presented to the board of county commissioners to be audited as provided by law.

1887 R. S. Sec. 2160.

The charges claimed for publishing the delinquent tax list must be presented to the board of county commis-

sioners for audit and allowance.—Jolly v. Woodworth, Auditor (Idaho), 42 Pac. 512.

Section 1786. County Charges Enumerated: The following are county charges:

First.—Charges incurred against the county by virtue of any provision of this title.

Second.—The compensation allowed by law to constables for executing process on persons charged with criminal offenses; for services and expenses in conveying criminals to jail; for the service of subpoenas issued by or at the request of the prosecuting attorneys and for other services in relation to criminal proceedings.

Third.—The expenses necessarily incurred in the support of persons charged with or convicted of crime and committed therefor to the county jail.

Fourth.—The salaries allowed by law to county officers.

Fifth.—The sum required by law to be paid to grand jurors and indigent witnesses in criminal cases.

Sixth.—The accounts of the coroner of the county, for such services as are not provided to be paid otherwise.

Seventh.—All charges and accounts for services rendered by justices of the peace for services in the examination of persons charged with crime, not otherwise provided for by law.

Eighth.—The necessary expenses incurred in the support of county hospitals and the indigent sick, and the otherwise dependent poor, whose support is chargeable to the county.

Ninth.—The contingent expenses, necessarily incurred for the use and benefit of the county.

Tenth.—Every other sum directed by law to be raised for any county purpose, under the direction of the board of county commissioners, or declared to be a county charge.

1899, 5th Ses. p. 120, Sec. 7, omitting last part of Sub. 10; 1891, 1st Ses. p. 180, Sec. 7, which was an amendment of laws of 1887 R. S. Sec. 2161.

JURY FEES: The mileage and fees of jurors in the district court are county charges.—*Salt Lake County v. Richards*, 14 Utah, 142, 46 Pac. 659. And the liability of the county arises when the services are rendered.—*Huddleston v. Board of Commissioners (Okl.)* 58 Pac. 749.

PUBLISHING DELINQUENT TAX LIST: The charge for publishing the delinquent tax list is a county charge.—*Jully v. Woodworth, Auditor (Idaho)*, 42 Pac. 512.

When a physician or surgeon has been subpoenaed and ordered by a county coroner under the provisions of

Section 8379, Rev. St. to inspect the body of a deceased person, and to give to the coroner's jury his professional opinion as to the cause of death, the reasonable value of his services in making an inspection is a charge against the county, under the provisions of Section 2161, Rev. St., and acts amendatory thereof, defining what claims are charges against the county.—*Fairchild v. Ada County (Idaho)*, 55 Pac. 654.

The coroner is not authorized to make a contract as to the sum the county shall pay in such cases, and the board of county commissioners should only allow the reasonable value of such services. *Quarles J., dissenting.*—*Fairchild v. Ada County (Idaho)*, 55 Pac. 654.

CHAPTER LXVIII.

REDEMPTION OF COUNTY INDEBTEDNESS.

Section.

- 1787. County commissioners may issue bonds; character of.
- 1788. When may issue bonds without vote of people.
- 1789. Bonds for certain purposes, submitted to vote.
- 1790. Tax for interest on and redemption of bonds.
- 1791. Collecting tax in segregated territory.
- 1792. Form of bonds; signatures.
- 1793. General provisions respecting notice, sale, redemption, etc., of bonds.

Section.

- 1794. Application of funds.
- 1795. Special elections; notices, what to recite.
- 1796. General election laws apply; exceptions.
- 1797. Form of ballot.
- 1798. Election judges. Return and canvass of votes.
- 1799. Special election may be held with general election.
- 1800. Validating certain bonds.

Section 1787. County Commissioners may Issue Bonds, Character of: The board of county commissioners of any county in this state, may issue negotiable coupon bonds, of their county for the purpose of paying, redeeming, funding or refunding the outstanding indebtedness of the county, as hereinafter provided, whether the indebtedness exists as warrant indebtedness, or bonded indebtedness. Said bonds shall be issued as near as practicable, in denominations of one thousand dollars each, but bonds of the denominations of five hundred, and one hundred dollars may be issued when necessary. Said bonds must bear interest at a rate of not to exceed six per cent. per annum, the interest to be paid on the first day of January and the first day of July in each year, at the office of the county treasurer, or at such bank in the city of New York as may be designated by the board of county commissioners; such bonds to be redeemed by the county in the following manner: Ten per cent. of the total amount issued to be paid in ten years from the date of issue; and ten per cent. annually thereafter until all of said bonds are paid. But said bonds or any part thereof, may at the option of the county issuing the same, be redeemed at any time after ten years from

the date of their issue, provided such time and option be stated upon the face of each bond, and each bond must be redeemed in the order it is numbered.

1899, 5th Ses. p. 136; 1895, 3d Ses. p. 56, amending laws of 1891, 1st Ses. p. 200, which was an amendment of laws of 1887 R. S. Sec. 3602.

EQUITY PROCEEDING TO RESTRAIN WILL NOT LIE: When an order for the sale and issuance of bonds have been made and entered of record by the board of commissioners of any county, proceedings in equity

to restrain the issuance and sale of such bonds in pursuance of such order will not lie, the court having no jurisdiction in equity, when there is a plain, speedy, and adequate remedy at law by appeal from the order of the board.—*Morgan v. Commissioners (Idaho)*, 39 Pac. 1118; *Picotte v. Watt*, 2 Idaho, 1154, 31 Pac. 805.

Section 1788. When may Issue Bonds Without Vote of People: For the purpose of extending the time of payment of said outstanding indebtedness, or reducing the interest charged, or when the interests of the county require it, the board may issue said bonds, in exchange for bonds, theretofore issued by the county, or for valid and legal warrants of the county, then outstanding, and may do so by resolution of the board at a regular meeting thereof, and without a vote of the people.

Before any bonds shall be issued or exchanged under this section, the board of county commissioners shall ascertain that the bonds or warrants, the payment of which, is to be extended, or which are to be taken in exchange for the new issue of bonds, are valid, and legal obligations of the county, and their finding of fact shall be entered of record, on the minutes of their proceedings at least ten days before any exchange is made, as herein provided. The said board shall also, before issuing any bonds under this section, deduct from the total outstanding legal indebtedness of the county, at the time of the issue of said bonds, the cash on hand in the treasury of the county, that is available for the payment of said legal indebtedness, or any part thereof, and the issue of bonds as in this section provided for, shall in no case exceed the aggregate or total legal indebtedness of the county then outstanding, less the cash on hand to be applied in payment and discharge of said indebtedness.

1899, 5th Ses. p. 136; 1895, 3d Ses. p. 57, amending laws of 1887 R. S. Sec. 3603.

VALIDITY OF BOND ISSUE: Counties may issue bonds to take up both warrants and bonded indebtedness, when authorized so to do by a vote of two-thirds of the electors of the county voting at an election to be held for that purpose; and may, when the debt of the county is not increased thereby, issue bonds to be exchanged for outstanding county warrants or bonds without submitting the question of the issuance of such bonds to a vote of the electors of the county.—*Bannock County v. C. Bunting & Co. (Idaho)*, 37 Pac. 277.

To uphold the validity of a proposed issue of county bonds, it must affirmatively appear by the record that the

provisions of the constitution were complied with by the commissioners in creating the debt or debts about to be funded; and a taxpayer resident of the county may sue to enjoin the issuance of funding bonds which are about to be issued for debts contracted in violation of the provisions of the constitution.—*Dunbar v. Commissioners (Idaho)*, 49 Pac. 409.

The issue of bonds by county commissioners to redeem outstanding bonds or warrants is not the incurring of an indebtedness within the inhibition of the constitution and need not, therefore, be submitted to the electors.—*Hotchkiss v. Marion (Mont.)*, 29 Pac. 821.

A board of county commissioners proceeded, under the provisions of the act of March 8, 1895, to fund outstand-

ing warrant indebtedness of the county, submitting the question to the electors at an election called for the purpose, at which election more than two-thirds of the electors voted in favor of issuing the proposed bonds. After due notice, bids were received, and one bid for the entire issue was accepted, the bonds duly engraved and signed ready for delivery, when an agreed case was submitted to the district court for the purpose of determining the validity of the proposed bonds, the principal contention being that said

act of March 8, 1895, was void; first, because not constitutionally passed; second, because the subject thereof was not expressed in the title. Held, that the legislature having re-enacted the act of March 8, 1895, and passed an act validating all bonds theretofore issued under said act, the court will not inquire into or determine the validity of said act as originally passed, as such question is immaterial to the validity of the proposed bonds.—*Crocheron v. Shea et al.* (Idaho), 57 Pac. 707.

Section 1789. Bonds for Certain Purposes, Submitted to Vote: When the interests of the county require it and the board of commissioners of the county deem it for the public good to bond the county to fund or refund the outstanding obligations of the county, or bond the county for the purpose of providing funds for acquiring a site, and erecting a court house, and jail, or a jail thereon, and for the construction or repair of roads or bridges, or for any one or more of said purposes, and the indebtedness or liability of the county, that may be created by the bonding, funding or refunding aforesaid, or in purchasing a site and erecting a court house and jail, or a jail, thereon, and for the construction or repair of roads or bridges, or for any one or more of said purposes, exceeds the income or revenue of the county for that year, the board of commissioners may issue bonds of the county, as provided by section 1787: *Provided*, That the issuance of such bonds be first authorized by a vote of two-thirds of the qualified electors of the county voting at an election held for that purpose, as hereinafter provided.

And provided further, That before the board of county commissioners shall issue any bonds to fund or refund the indebtedness of the county as in this section provided, they shall deduct from the legal indebtedness of the county at the time of the issue of said bonds, the cash on hand in the county treasury applicable to the discharge of said indebtedness, and may issue bonds for the remainder of the indebtedness.

1899, 5th Ses. p. 137; 1895, 3d Ses. p. 3604.
57, amending laws of 1887 R. S. Sec.

Section 1790. Tax for Interest on and Redemption of Bonds: The board must cause to be levied annually, upon all the taxable property of the county, in addition to other authorized taxes, a sufficient sum to pay the interest on all bonds disposed of in pursuance of this chapter, and must at least one year before such bonds become due, and in time to provide the means for their payment, cause to be levied a sufficient additional sum to pay said bonds as they become due, and all such taxes must be levied, assessed, and collected, as other county taxes are levied, assessed, and collected, until the bonds so issued are fully paid, including the interest thereof; the faith, credit, and all taxable property within the limits of the county, as constituted at the time of such issue, are, and must continue, pledged to the payment of said bonds, Should the tax for the

payment of interest on any bonds issued under the provisions of this chapter, at any time not be levied or collected in time to meet such payment, the interest must be paid out of any moneys in the county general, or current expense fund of the county, and the moneys so used for such payment of interest must be repaid to the fund from which so taken, out of the first moneys arising from taxes collected on interest account as herein provided, and any excess over and above the interest charge shall be placed in a sinking fund, to be known as the bond tax sinking fund.

The moneys in the sinking fund created under this section may be invested in bonds or warrants of the state, or bonds issued by any county, or city, or school district in any state of the United States; and the county treasurer of the county may, when authorized at a regular meeting of the board of county commissioners of the county make the investment for the county.

1899, 5th Ses. p. 137; 1895, 3d Ses. p. 3605.
58, amending laws of 1887 R. S. Sec.

Section 1791. Collecting Tax in Segregated Territory: Should any part of a county that has incurred a bonded indebtedness, be cut off, and annexed to another county, or erected into a new or separate county, the assessor of the county to which the segregated portion is attached, or the assessor of the new county created as aforesaid, shall upon notice from the board of county commissioners of the original county from which such segregated portion was detached, given at the regular session of the board when county and state taxes are levied, collect in said segregated territory, and in addition to the other taxes collected by him for county and state purposes, and at the same time and in the same manner, the tax levied by said board of commissioners as herein provided; and the laws of the state relating to the levy and collection of taxes, and prescribing the powers, duties and liabilities of officers, charged with the collection, and disbursement of the revenue arising from taxes, are made applicable to this chapter. The money collected by the assessor as aforesaid, shall be paid over by the treasurer of the county collecting it, to the treasurer of the county losing the said territory, and for the purposes herein directed, but such segregated territory so attached to another county, or erected into a new county shall be relieved of the annual tax, levied as provided in the foregoing section, when the county acquiring the same, or the new or separate county pays to the county losing the territory that proportion of the whole indebtedness, together with legal interest thereon, that the assessed value of the property in the segregated territory, bears to the assessed value of the property in the whole county, as constituted before the division or segregation thereof.

1899, 5th Ses. p. 138; 1895, 3d Ses. p. 3606.
59, amending laws of 1887 R. S. Sec.

Section 1792. Form of Bonds; Signatures: The bonds mentioned in this chapter must be signed by the chairman of the board of county commissioners, attested by the clerk of said board

and bear the seal of said board, and be countersigned by the county treasurer of the county. Each bond must state upon its face the amount for which the same is issued, the date of issue, time and place of payment, the rate of interest, and must also recite that it is issued in conformity with the provisions of this chapter, and this chapter must be printed upon the back of each bond. There must be attached to each bond, when negotiated, semi-annual interest coupons covering the interest expressed in the bond from the date of issue until paid; the coupons annexed to such bonds must be signed by the treasurer of the county. Each coupon must bear a number corresponding to the number of the bond to which it is attached, and must state upon its face the amount for which the same is issued, the date of issue and the date and place of payment thereof.

1899, 5th Ses. p. 138; 1895, 3d Ses. p. 3607.
59, amending laws of 1887 R. S. Sec.

Section 1793. General Provisions Respecting Notice, Sale, Redemption, Etc., of Bonds: The said board of county commissioners must give at least twenty days' notice by publication in some newspaper, if there be one published in the county, otherwise, by three notices posted up in the county, one of which must be at the court house door, of its intention to issue, negotiate and sell such bonds, or of its intention to issue such bonds for exchange, and shall invite bidders therefor; and said bonds must be sold or exchanged upon the best terms and upon the lowest rate of interest at which said bonds can be sold or exchanged, and the said board shall have the right to reject any or all of the bids offered, and may re-advertise for bids as herein provided for, by original notice. If the offers for purchase or exchange are accepted, the board must procure the proper engraving and printing of said bonds, which must be numbered consecutively, and must be duly registered by the auditor of the county in a book kept for that purpose; and therein must be stated the number, date, amount of bond, time and place of payment, rate of interest, number of coupons attached and any other proper description thereof for future identification; the said board must from time to time, in such amounts as it may deem best, and in accordance with its contract, deliver said bonds to the county treasurer, and take and file his receipt therefor, and charge him with all bonds so delivered. Any duties required of said board in pursuance of the provisions of this section may be performed at any general, special or called meeting thereof. The treasurer must under the general supervision of said board, deliver said bonds for cash, or exchange them for any of the county indebtedness for the redemption of which they were issued, but in no case must said bonds be sold or exchanged for less than their face or par value and accrued interest at time of disposal; nor must any county indebtedness be redeemed at more than its face value and any interest that may be due thereon. If any portion of said bonds issued for the redemption of prior indebtedness are sold for money, the proceeds thereof must be **applied** exclusively toward the redemption of said county indebtedness for the

redemption of which such bonds were issued. And the treasurer must give notice, as provided by law, of his readiness to redeem such indebtedness and thereafter interest thereon shall cease. When the treasurer redeems any county indebtedness, he must endorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so redeemed, the time when, and the amount for which redeemed, whether by money or the exchange of bonds, and the words "redeemed" and "canceled." He must also keep a record of all bonds disposed of by him, showing their number, rate of interest, date and amount of sale, when, where and to whom payable; and if exchanged, for what, which record he must keep open for inspection for the public at all reasonable office hours. And he must make such detailed statements to, and as often as required by said board, of all his transactions under the provisions of this chapter, and return to the board, evidences of indebtedness redeemed by him, cancelled as aforesaid.

1899, 5th Ses. p. 138; 1895, 3d Ses. p. 3608.
60, amending laws of 1887 R. S. Sec.

Section 1794. Application of Funds: It shall be the duty of the county treasurer to apply the funds derived from the sale of the bonds to the payment of the indebtedness herein mentioned, and to no other purpose; and it shall be the duty of the county officials to levy, collect and apply the tax herein provided for, to the payment of interest and to the redemption of the principal of the bonds in the manner specified, and for no other purpose.

1899, 5th Ses. p. 139; 1895, 3d Ses. p. 3609, penal portion, Sec. 4800, Penal
61, amending laws of 1887 R. S. Sec. Code.

Section 1795. Special Election; Notices, what to Recite: If the question of bonding the county as herein provided, is to be submitted to the voters of the county at a special election held for that purpose, the board shall cause printed or written notices of the intention to hold such an election, to be posted in two or more conspicuous places in each precinct of the county, and shall also cause a printed notice of the intention to hold such an election to be published in one or more newspapers of the county, if any newspapers are printed therein; the said notices shall recite the action of the board in deciding to bond the county, the purpose thereof, and the amount of the bonds that are to be issued, and shall also specify the day of the election, the time during which the ballot box shall be open, which shall not be less than six hours; the notices posted in each of the several precincts shall also name the place of holding such election. The notices herein provided for shall be posted, or posted and published, at least twenty days before such election. Every person over the age of twenty-one, who is a citizen of the United States, and shall have resided in the state six months immediately preceding the election at which he offers to vote, and in the county thirty days, shall be entitled to vote at such election.

1899, 5th Ses. p. 139; 1895, 3d Ses. p. 3610.
62, amending laws of 1887 R. S. Sec.

Section 1796. General Election Laws Apply; Exceptions: Such election shall be held in all respects in conformity

with the general election laws so far as the same may be applicable, except as herein provided, but all that part of the general election law relative to the apportionment of registrars and the registration of voters, the appointment of judges and clerks, and the establishment of voting booths and printing of an official ballot, and providing for an official stamp, and method of voting, as provided in sections 848, 849 and 850 the general election law, shall not apply.

1899, 5th Ses. p. 140; 1895, 3d Ses. p. 3611.
62, amending laws of 1887 R. S. Sec.

Section 1797. Form of Ballot: Such election shall be by ballot. The ballot shall be of white paper, three inches square, and contain the words: "Bond. Yes." "Bond. No." And shall have printed at the top the following instruction. "If the voter desires to vote for the issue of bonds, he shall strike out the word "No." If he desires to vote against the issue, he shall strike out the word "Yes."

The auditor of the county shall cause the ballots to be printed and distributed, and shall send a sufficient number to the judges appointed in the several precincts.

1899, 5th Ses. p. 140; 1895, 3d Ses. p. 3613.
63, amending laws of 1887 R. S. Sec.

Section 1798. Election Judges. Return and Canvass of Votes: The board of county commissioners shall appoint two judges and one clerk of election in each precinct, for the purpose of holding such election, and upon the failure of either to act, the electors present at the opening of the polls may fill vacancies. Such judges and clerks conducting such election shall make return of such election to the board of county commissioners, within three days after such election is held.

The returns for bond elections shall be canvassed in the same manner as the returns for election of county and precinct officers are canvassed, and the result of the vote shall be officially declared by the county board of canvassers in the following manner: They shall record the total vote cast in each precinct for and against the proposed issue of bonds, in the book provided for recording the results of the general election, and shall make a complete copy of such record, duly certified to by them, and shall deposit the same with the auditor of the county.

1899, 5th Ses. p. 140; 1895, 3d Ses. p. 3612.
62, amending laws of 1887 R. S. Sec.

Section 1799. Special Election may be held with General Election: The special election herein provided for, may be held at the same time and place at which the general election is held, and the officers of the general election in each precinct may serve as officers of the special election, but the notices of the election must be given, and the tickets printed and distributed as herein prescribed; the ticket when voted, shall be deposited in a separate box provided for its reception; the return of the vote by the judges of election shall be on a separate sheet from the return of the general election, and shall be canvassed as hereinbefore provided for.

1899, 5th Ses. p. 140; 1895, 3d Ses. p. 63, amending laws of 1887 R. S. Sec. 3614.

Section 1800. Validating Certain Bonds: All bonds heretofore duly issued under, in pursuance or by virtue of, and in accordance with, the provisions of any act of the first, second, third or fourth sessions of the legislature of the State of Idaho are hereby declared to be good, valid and binding obligations, any question as to the manner of the passage of any such act or acts notwithstanding; and their validity shall not be questioned in any court.

1899, 5th Ses. p. 368.

A board of county commissioners proceeded, under the provisions of the act of March 8, 1895, to fund outstanding warrant indebtedness of the county, submitting the question to the electors at an election called for the purpose, at which election more than two-thirds of the electors voted in favor of issuing the proposed bonds. After due notice, bids were received, and one bid for the entire issue was accepted, the bonds duly engraved and signed ready for delivery, when an agreed case was submitted to the district court for the purpose of determin-

ing the validity of the proposed bonds, the principal contention being that the said act of March 8, 1895, was void: first, because not constitutionally passed; second, because the subject thereof was not expressed in the title. Held, that the legislature having re-enacted the act of March 8, 1895, and passed an act validating all bonds theretofore issued under said act, the court will not inquire into or determine the validity of said act as originally passed, as such question is immaterial to the validity of the proposed bonds.—*Crocheron v. Shea et al.* (Idaho), 57 Pac. 707.

CHAPTER LXIX.

COUNTY POOR.

Section.

1801. Contract for maintenance of poor.

1802. County physician. Employment of inmates of poor farm.

1803. Accounts of poor farm; quarterly report.

1804. Treatment of inmates.

1805. Application for county aid.

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1807. Application by other than beneficiary.

1808. Duty of county commissioners.

1809. No claim allowed without certificate.

1810. Inmates, when discharged.

1811. Hospital tax.

1812. Hospital tax receipts.

Section 1801. Contract for Maintenance of Poor:

The board of county commissioners, in their respective counties, may contract for the care, protection and maintenance of the indigent sick, or otherwise dependent poor of the county. They must require the contractor to enter into a bond to the county with two or more approved sureties, in such sum as the board may fix, conditioned for the faithful performance of his duties and obligations as such contractor, and require him to report to the board quarterly all persons committed to his charge, showing the cause and nature of their confinement and the expense attendant upon their care and maintenance.

1887 R. S. Sec. 2170; Compiled Laws 1875, p. 852, Sec. 3.

LIBERALITY OF STATUTE: The provisions of the statute of this state are broad enough to include all indigent sick within the county. There is no requirement that a person must reside within the county a certain length of time before receiving the

benefits provided for, or that any particular qualification shall be possessed other than that of being indigent sick, or otherwise dependent poor; but a citizen of another state who comes into this state and becomes sick and is unable to provide for himself proper medical aid and support while so sick comes within the provisions of our

law.—Board of Com'rs of Logan County v. McFall (Idaho), 35 Pac. 691.

However, in a case of that kind, it is the duty of the board of commissioners to remove such sick person to the county or state of his residence, as soon as practicable.—Id.

A person who contracts with the county to care for and maintain all the county poor by the year for a gross

sum, cannot hold the county liable for the support of a person, who does not come within his contract, although such person was committed to his care under a proper certificate of the justice of the peace, as in such case, he is not required to keep any who do not come within the terms of his contract.—Com'mrs v. McFall (Idaho), 35 Pac. 691.

Section 1802. County Physician. Employment of Inmates of Poor Farm: The board must employ a physician to attend, when necessary, upon the inmates of the poor house or county hospital. They must provide for the employment at some kind of manual labor of such of the inmates as are capable and able to work, and the attending physicians must certify to the keeper or lessee of the poor farm the names of such of the inmates as are incapable of manual labor and when any such inmate becomes capable the physician must certify the fact.

1887 R. S. Sec. 2171.

Section 1803. Accounts of Poor-Farm; Quarterly Report: The keeper of the county poor farm, poor house or hospital must keep a correct account of all receipts and expenditures in connection therewith and make full and complete reports thereof quarterly to the board of county commissioners.

1887 R. S. Sec. 2172.

Section 1804. Treatment of Inmates: The treatment of all inmates of the poor house and hospital must be kind and humane; they must be supplied with comfortable clothing, sufficient bedding and plain substantial food, and must not be required to perform labor to an extent that is detrimental to health; but the keeper has power to compel those who are able to perform labor, to perform the same by reasonable and humane coercion.

1887 R. S. Sec. 2179.

Section 1805. Application for County Aid: Any sick or indigent person desiring aid from any county of this state, must, before such aid can be given, make a written application to the probate judge, the clerk of the board of county commissioners or to any justice of the peace in the precinct where such applicant may reside, setting forth and describing all the property, real, personal and mixed, wherever it is situated, owned in whole or in part by such applicant, or in which he has any legal or equitable interest; if such applicant has no available property, real or personal, then he must declare his indigency and destitution, which must be signed and sworn to by the party or parties making such application, before some officer authorized by the laws of this state to administer oaths, and filed in the office of the clerk of the board of county commissioners.

1887 R. S. Sec. 2173; 1885, 13th Ses.p. 127.

Section 1806. Proceedings upon Application: It is the duty of the probate judge, clerk of the board of county commis-

sioners, or the justice of the peace to whom such application is made, to immediately investigate the grounds of such application, and for such purpose he may require the applicant and such other persons as may be deemed necessary to testify under oath, and if such officer is fully satisfied that said applicant is really sick, indigent and in destitute circumstances, and would suffer unless aided by the county, he must file a certificate to that effect with the clerk of the board of county commissioners of such county, and in case said board of county commissioners is not in regular session at the time of the date of such certificate, the officer to whom said application is made may, in his discretion, authorize the applicant to be placed in the poor house or hospital of the county, or, if the county is not provided with a poor house or hospital, he may authorize the expenditure of any sum not exceeding forty dollars in the aggregate, to provide for the immediate necessities of such applicant, and must present his bill for such expenditure to the board of county commissioners duly verified under oath, and the board must audit and pay such bill out of the proper fund of such county at their next regular session.

1887 R. S. Sec. 2174; 1885, 13th Ses. p. 127.

A justice of the peace has no authority to commit a person to the county hospital for the indigent sick, except those who come within the pro-

visions of the statutes of this state, and unless a person comes within such provisions, he cannot bind the county for his keeping and care.—Board of Com'rs v. McFall (Idaho), 35 Pac. 691.

Section 1807. Application by Other than Beneficiary: If any sick and indigent person or persons, desiring assistance from any county in this state, are unable from illness to make the application in writing required in this chapter, such application may be made for him or on his behalf, by any other person under oath.

1887 R. S. Sec. 2177; 1885, 13th Ses. p. 128.

Section 1808. Duty of County Commissioners: The certificate as aforesaid, if in their judgment the applicant is sick and indigent, and would suffer if not aided by the county, makes such provisions for his relief as may be necessary under the circumstances.

1887 R. S. Sec. 2175; 1885, 13th Ses. p. 128.

Section 1809. No Claim Allowed Without Certificate: The county commissioners must not allow any claim or demand against the county for services rendered to any sick or indigent person who has not previously obtained from the probate judge, clerk of the board of county commissioners or the justice of the peace, as aforesaid, the certificate heretofore mentioned, and must not allow any claim or demands whatsoever against the county for any expense incurred by, or in behalf of, any sick or indigent person before the filing of the application and certificate aforesaid.

1887 R. S. Sec. 2176; 1885, 13th Ses. p. 128.

Section 1810. Inmates, when Discharged: Every person admitted to the county poor house or hospital, must be discharged therefrom by the keeper:

First, at his own request, if capable of taking care of himself, or if his friends or relatives are willing to take care of him. Secondly, whenever, in the judgment of the keeper and attending physician, the person is capable of supporting himself; but in such case the county commissioners have the power to revise the act of the keeper and attending physician, and can return a person who, in their judgment, has been improperly discharged, or may discharge any one that in their judgment, should no longer be an inmate of the poor house or hospital.

1887 R. S. Sec. 2178.

Section 1811. Hospital Tax: The per capita and ad valorem tax, when levied by the board of county commissioners for the care and maintenance of the poor of the county, must be collected by the tax collector in the same manner and at the same time as other county taxes, and when collected must be paid into the "current expense fund" of the county and shall be drawn therefrom as other current expenses.

1901, 6th Ses. p. 290, Sec. 180.

Hospital tax: Sec. 1584, Sub. 5.

Section 1812. Hospital Tax Receipts: The county treasurer must provide blank receipts for the special per capita hospital tax when levied, which must be signed by the treasurer and countersigned and registered by the auditor, and delivered and charged to the tax collector and his receipt taken therefor.

1887 R. S. Sec. 2181; Compiled Laws 1875, p. 853.

TITLE IX.

GOVERNMENT OF CITIES, TOWNS AND VILLAGES.

Chap. LXX. Cities of the Second Class.

Chap. LXXI. Villages.

Chap. LXXII. General Provisions Applicable to Cities of the Second Class and Villages.

Chap. LXXIII. City and Village Plats.

CHAPTER LXX.

CITIES OF THE SECOND CLASS.

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1871. Part of street may be improved.

GENERAL PROVISIONS.

Section 1813. What Constitutes City of Second Class:

All cities, towns and villages containing more than one thousand and less than fifteen thousand inhabitants shall be cities of the second class, and be governed by the provisions of this chapter, unless they shall adopt a village government as hereinafter provided.

1899, 5th Ses. p. 192, Sec. 1; 1893, 2d Ses. p. 97, Sec. 1.

Under the provisions of Sec. 1, Art. XII of the constitution of Idaho, the legislature may pass general laws for the incorporation, organization, and classification of cities and towns in proportion to the population, and such general laws may be altered, amended or repealed by general laws. The latter part of said section points out a means by which towns that were incorporated prior to the adoption of the

constitution may become organized under such general laws. Under that provision the inhabitants of a town may express their intention to and become organized as a city of the second class by complying with the provisions of Sec. 1813 et seq.—*State v. Steunenberg* (Idaho), 45 Pac. 462. A city which succeeds to all the rights, franchises, and property of a village, is bound by the obligations of the latter.—*Guthrie v. Territory*, 1 Okl. 188, 21 L. R. A. 841; 31 Pac. 190.

Section 1814. Division into Wards: Each city of the second class shall be divided into not less than two nor more than six wards, as may be provided by ordinance of the city council thereof, and each ward shall contain, as nearly as practicable, an equal number of legal voters and an area as equal to each other as practicable.

1899, 5th Ses. p. 192, Sec. 2; 1893, 2d Ses. p. 97, Sec. 2.

Section 1815. Council, Membership: The council of each city of the second class shall consist of not less than four nor

more than twelve citizens of said city, who shall be qualified electors and taxpayers under the constitution and laws of the State of Idaho.

1899, 5th Ses. p. 192, Sec. 3; 1893, 2d Ses. p. 98, Sec. 3. Qualified electors: Const. Art. VI, Sec. 2; also Sec. 786 of this Code.

Section 1816. Election of Councilmen: Each ward of each city shall have at least two councilmen, who shall be chosen by the qualified electors of their respective wards, and who shall serve for two years and until their successors shall be elected and qualified; and no person shall be eligible to the office of councilman who is not at the time of his election an actual resident of the ward for which he is elected, and a qualified elector under the constitution and laws of the State of Idaho; and if any councilman shall remove from the ward for which he is elected, his office as councilman shall thereby become vacated: *Provided*, At the first general city election under this chapter, there shall be two councilmen elected from each ward, the one receiving the greatest number of votes shall serve for two years, and the one receiving the next highest number of votes shall serve for one year; and one councilman for each ward shall be elected at each annual election thereafter. Whenever there shall be a tie in the election of councilman, it shall be determined by lot by the judges of election of the ward in which it shall happen.

1899, 5th Ses. p. 192, Sec. 4; 1893, 2d Ses. p. 98, Sec. 4.

OFFICERS OF THE CITY.

Section 1817. Officers Enumerated; Election and Appointment: At the time of holding the general city election in each year, there shall be elected a mayor, a clerk, a treasurer, a city engineer, and the councilmen hereinbefore provided for, a police judge shall be elected at each biennial city election, and the mayor with the consent of the council may appoint a city attorney and an overseer of streets, who shall hold their offices for one year unless sooner removed by the mayor with the advice and consent of the council. The mayor by and with the consent of the council shall appoint such a number of regular policemen as may be necessary, and may also appoint special policemen from time to time as exigencies arise. All police officers appointed by the mayor and council in accordance herewith, shall be removable at any time by the mayor.

1899, 5th Ses. p. 193, Sec. 6; 1893, 2d Ses. p. 98, Sec. 6.

Annual election, when held; Sec. 1904.

ELECTION SHOWS INTENTION TO ORGANIZE: The electors of a city or town may show their intention by a majority vote to organize under the general laws of the state as provided in Sec. 1, Art. 12 of the constitution, by the election of a mayor and common council and all city officers,

and by complying with all the provisions of such general laws.—State v. Steunenberg (Idaho), 45 Pac. 462.

CITY ATTORNEY: A statute authorizing the mayor, with the consent of the council, to appoint a city attorney is not repugnant to the constitutional provision that municipal officers shall be elected at such time as provided by law.—Idaho Constitution, Art. 18, Sec. 6; Whipple v. Henderson, 13 Utah, 454, 45 Pac. 274.

Section 1818. Qualifications: All officers shall be qualified electors and taxpayers and reside within the limits of the city.

1899, 5th Ses. p. 193, Sec. 9; 1893, 2d Ses. p. 99, Sec. 9,

Qualified electors: Const. Art. VI, Sec. 2; also Sec. 786 of this Code,

Section 1819. Salaries: The salaries of all officers of the city shall be fixed by ordinance.

1899, 5th Ses. p. 193, Sec. 7; 1893, 2d Ses. p. 99, Sec. 7.

Section 1820. Fees of Police Judge: The police judge shall receive the same fees as justices of the peace for similar services.

1899, 5th Ses. p. 193, Sec. 8; 1893, 2d Ses. p. 99, Sec. 8. Fees of justices: Sec. 1773.

EXECUTIVE POWERS.

Section 1821. Mayor has General Control: The mayor shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and the provisions of this chapter are complied with.

1899, 5th Ses. p. 193, last part of Sec. 10; 1893, 2d Ses. p. 99, Sec. 10.

Section 1822. Mayor may Require Reports from Officers: The mayor shall have the power, when he deems it necessary, to require any officer of the city to exhibit his accounts or other papers, and to make reports to the council in writing, touching any subject or matter pertaining to his office.

1899, 5th Ses. p. 193, Sec. 14; 1893, 2d Ses. p. 99, Sec. 14.

Section 1823. Jurisdiction Beyond City Limits: The mayor shall have such jurisdiction as may be vested in him by ordinance, over all places within five miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof, and shall have jurisdiction in all matters vested in him by ordinance, excepting taxation within one-half mile of the corporate limits of said city.

1899, 5th Ses. p. 194, Sec. 15; 1893, 2d Ses. p. 100, Sec. 15.

JURISDICTION: A city may contract for the disposal of its sewage from the outflow of its sewers, though this is outside of the corporate limits. —McBeen v. Fresno, 12 Cal. 159, 31 L.

R. A. 794. But see *State v. Eason*, 114 N. C. 787, 23 L. R. A. 520, 19 S. E. 88. Where it was held that an ordinance prohibiting the throwing of fish and offal into a river is void for want of jurisdiction where the boundary of the municipality is the low water line of the river.

Section 1824. May Call on Inhabitants to Enforce Laws: The mayor is hereby authorized to call on every male inhabitant in the city over eighteen years of age and under fifty years of age, to aid in enforcing the laws.

1899, 5th Ses. p. 194, Sec. 17; 1893, 2d Ses. p. 100, Sec. 17.

Section 1825. Mayor may Remit Fines, Grant Pardons, Etc.: The mayor shall have power to remit fines and forfeitures, to grant reprieves and pardons for all offenses arising under the ordinance of the city.

1899, 5th Ses. p. 194, Sec. 18; 1893, 2d Ses. p. 100, Sec. 18.

Section 1826. President of Council to Act as Mayor, when: In case of any vacancy in the office of mayor, or in case of his absence or disability, the president of the council for the time being, shall exercise the office of mayor until such vacancy be filled,

or such disability removed; or in case of temporary absence, until the mayor shall return.

1899, 5th Ses. p. 194, Sec. 16; 1893, 2d Ses. p. 10, Sec. 16.

The approval of an ordinance by the acting president of the board of aldermen in the absence of the mayor is sufficient when the statute provides

that in the absence of the mayor he shall perform the duties with all the rights, powers, and jurisdiction of the mayor.—*Saleno v. Neosho*, 127 Mo. 627, 27 L. R. A. 769; 30 S. W. 190.

Section 1827. Policemen; Powers: The policemen of the city shall have power to arrest all offenders against the law of the state, or of the city, by day or by night, in the same manner as one sheriff or constable, and keep them in the city prison or other place, to prevent their escape, until trial can be had before the proper officer.

1899, 5th Ses. p. 194, Sec. 19; 1893, 2d Ses. p. 100, Sec. 19.

Arrests, how made: Penal Code, Sec. 5236 et seq.

Section 1828. Duties of City Engineer; Estimates: The city engineer shall make estimates of the cost of all labor and materials which may be done or furnished by contract with the city, and make all surveys, estimates, and calculations necessary to be made for the establishment of grades, building of culverts, sewers, bridges, curbing and gutters, the improvement of streets and the erection and repair of buildings, and shall perform such other duties as the council may require. Before the city council shall make any contract for building bridges or sidewalks, or for any work on the streets, or for any other work or improvement, an estimate of the cost thereof shall be made by the city engineer and submitted to the council, and no contract shall be entered into for any work or improvement for a price exceeding such estimate; and in advertising for bids for any such work the council shall cause the amount of such estimate to be published therewith.

1899, 5th Ses. p. 194, Sec. 20; 1893, 2d Ses. p. 100, Sec. 20.

Section 1829. Duties of Overseer of Streets: The overseer of the streets shall, subject to the orders of the mayor and council, have general charge, direction, and control of all work on the streets, sidewalks, culverts, and bridges of the city, and shall perform such other duties as the council may require.

1899, 5th Ses. p. 194, Sec. 21; 1893, 2d Ses. p. 101, Sec. 21.

LEGISLATIVE POWER.

Section 1830. Regular Meetings of Council: Regular meetings of the city council shall be held at such times as the council may provide by ordinance.

1899, 5th Ses. p. 193, Sec. 5; 1893, 2d Ses. p. 98, Sec. 5.

Section 1831. Special Meetings of Council: The mayor or any three councilmen, shall have power to call special meetings of the city council, the object of which shall be submitted to the council in writing, and the call, and object, as well as the disposition thereof, shall be entered upon the journal by the clerk.

1899, 5th Ses. p. 193, Sec. 13; 1893, 2d Ses. p. 99, Sec. 13.

Section 1832. Mayor to Preside. When may Vote:

The mayor shall preside at all meetings of the city council, he shall have a casting vote when the council is equally divided, but shall vote at no other time.

1899, 5th Ses. p. 193, first part of Sec. 10; 1893, 2d Ses. p. 99, Sec. 10.

VOTE OF THE MAYOR: Under a similar provision the mayor was held to have no right to a casting vote where there is, in fact, no tie, but a tie is declared by counting members of the council present and not voting as voting in the negative.—*State v. Alexander*, 107 Iowa, 177, 77 N. W. 841.

Where the city council consisted of a mayor and eight aldermen, all of whom were present when the roll was called on the confirmation of a city officer, four of the aldermen voted for and four against the confirmation, and the mayor then voted in the affirmative. Held, that the officer was legally confirmed.—*State v. Yates* (Mont.), 47 Pac. 1004.

Section 1833. May Enact Ordinances for what Purposes: Cities of the second class in their corporate capacities are authorized and empowered to enact ordinances for the following purposes, in addition to other powers granted by this title:

First.—To restrain, prohibit and suppress billiard tables and bowling alleys kept for public use, houses of prostitution, and un-licensed tippling shops, and other disorderly houses and practices, gambling and gambling houses, and all kinds of public indecencies.

Second.—To make regulations to prevent the introduction of contagious diseases into the city, to make quarantine laws for that purpose, and enforce the same within five miles of the city.

Third.—To erect, establish and regulate hospitals, and to provide for the government and support of the same.

Fourth.—To make regulations to secure the general health of the city, and to prevent and remove nuisances, and to provide the city with water.

Fifth.—To establish night watch and police, and define the powers and duties of the same.

Sixth.—To provide for and regulate the lighting of the streets, public buildings, and grounds, and the erection of lamp posts, and to levy and collect a special tax therefor, upon all the taxable property within the city limits.

Seventh.—To purchase and own grounds for, and to erect and establish market houses and market places.

Eighth.—To provide for the erection and government of any useful or necessary buildings for the use of the city.

Ninth.—To procure fire engines, hooks, ladders, buckets and other apparatus, and to organize fire engines, hook and ladder and bucket companies and to prescribe rules of duty, and the government thereof, with such penalties as the council may deem proper, not exceeding one hundred dollars, and to make all necessary appropriation therefor.

Tenth.—To elect one of the members of the council the "president of the council," and he shall preside at all meetings of the council in the absence of the mayor; and, in the absence of the president, to elect one of the members to occupy his place temporarily, who shall be styled "acting president of the council," and the president and acting president, when occupying the place of mayor, shall

have the same privileges as other members of the council; and all acts of the president or acting president, while so acting, shall be as binding upon the council and upon the city as if done by the mayor.

1899, 5th Ses. p. 196, Sec. 39; 1893, 2d Ses. p. 103, Sec. 39.

See note to Sec. 1826.

CONSTRUCTION OF STATUTES:

Power to make an ordinance on a given subject conferred by the legislature, must be reasonably exercised, else the ordinance will be held invalid.—*Howes v. Chicago*, 158 Ill. 653, 30 L. R. A. 225; 42 N. E. 373.

The right to pass ordinances, given to a municipal corporation by its charter, will not be adjudged to be taken away by subsequent legislation unless it is wholly impossible to reconcile the state right with that conferred by the charter.—*Carney v. Neeley*, Mayor (Kan.), 57 Pac. 527.

HOUSES OF PROSTITUTION: An ordinance prohibiting the keeping of a house of prostitution within the corporate limits, or lawfully permitting any such house to be kept, was sustained under a similar statute.—*Childress v. Nashville*, 3 Sneed, 347, but see *State v. Webber*, 107 N. C. 962, 966, 12 S. E. 598. Further, an ordinance making it illegal and prohibiting persons from entering such houses, or being found there, was upheld under a similar statute, although the act was not held to be a nuisance.—*State v. Botkin*, 71 Iowa, 87, 61 Am. Rep. 780, 32 N. W. 185. Similarly, an ordinance prohibiting persons from being inmates of such places.—*Pery v. The State*, 37 Neb. 623; 56 N. W. 315.

GAMBLING: Under a statute granting power to suppress gambling, etc., held, that a city had no power to pass an ordinance declaring the setting up and keeping of any gambling device a misdemeanor, and punishing the same as such.—*Mt. Pleasant v. Breeze*, 11 Iowa, 399.

BOWLING ALLEYS: A bowling alley is not, of itself, a nuisance, and yet the legislature may determine whether its improper use tends to facilitate vicious practices, and may prohibit accordingly.—*State v. Noyes*, 30 N. H. 279, and an ordinance may declare it to be a nuisance.—*Id.*

HEALTH LAWS: A city is liable for damages caused by the erection of a pesthouse near the residence of a person, notwithstanding the fact that it is erected within the mile of the city, contrary to a statute which expressly makes the officers liable therefor, without declaring the city liable.—*Clayton v. Henderson* (Ky.), 44 L. R. A. 474, and citations. Likewise a city may con-

tract for the disposal of its sewage from the outflow of its sewers, though this is outside of the corporate limits.—*McBean v. Fresno*, 112 Cal. 159, 31 L. R. A. 794, 44 Pac. 358. But see *State v. Eason*, 114 N. C. 787, 23 L. R. A. 520, 19 S. E. 88, where it was held that an ordinance prohibiting the throwing of fish and offal into a river is void for lack of jurisdiction where the boundary of the municipality is the low-water line of the river.

HOSPITALS: A charge of \$520 annually imposed on theaters for the benefit of a charity hospital was attacked as unconstitutional, but upheld on the ground that the exaction of the tax was the price of a license and not a tax.—*Charity Hospital v. Stickney*, 2 La. Ann. 550.

NUISANCES: Definition, abatement of, and remedies for nuisances and a general treatment of the subject, see Civil Code, Chapter 115, and notes.

Any place of public resort in which illegal practices are corruptly carried on is a public nuisance.—*McLean v. The State*, 49 N. J. L. 471, 9 Atl. 681; *State v. Williams*, 30 N. J. L. 102. The keeping of a disorderly house is a nuisance at common law.—*State v. Bailey*, 21 N. H. 343, likewise the keeping of a gaming table.—*Lowry v. Rainwater*, 70 Mo. 152, 35 Am. Rep. 420. A city ordinance against street walking as being a common law nuisance was upheld in *Brady v. Millidgeville*, 74 Ga. 516, 58 Am. Rep. 443. Similarly an ordinance giving the mayor power to punish summarily persons of bad character found within the city limits was sustained as a valid exercise of police power to premarily persons of bad character found vent the disturbance of the public peace, the maintenance of a nuisance, and the obstruction of the public highways.—*Shafer v. Mumma*, 17 Md. 331, 79 Am. Dec. 656. Appeal against book-making and betting in public places, sustained as a suppression of nuisances.—*Burnett v. Berry* (1896), 1 Q. B. 641. Public picnics and open-air dances cannot be declared nuisances, by ordinances, because they are not nuisances in themselves.—*Desplaines v. Poyer*, 123 Ill. 348; 13 N. E. 819. So, an ordinance was held invalid in so far as it held the working of convicts in the streets to be a nuisance.—*Ward v. Little Rock*, 41 Ark. 526, 48 Am. Rep. 46. But see *State v. Noyes*, 30 N. H. 279.

The Idaho supreme court has held that by the charter of Boise City, the mayor and common council are em-

powered to declare what is a nuisance and are empowered to abate a nuisance.—*Boise City v. Boise Rapid Transit Co. (Idaho)*, 59 Pac. 716. But Indiana has held that a municipal corporation may not declare that to be a nuisance which in fact is not, although it is empowered by law to declare what shall constitute a nuisance.—*Evansville v. Miller*, 146 Ind. 613, 38 L. R. A. 161, 45 N. E. 1054.

STREET LIGHTING: The purchase of an electric light plant in so far as it is intended to furnish light for resi-

dences and places of business for private individuals, either with or without compensation, is beyond the power of a city.—*Maulden v. Greenville (S. C.)*, 8 L. R. A. 291.

PRESIDENT OF COUNCIL: Under a provision similar to subdivision 10, where one of the councilmen was elected to preside during the absence of the mayor, it was held that such presiding officer could not vote for an ordinance requiring a unanimous vote of the council.—*Cline v. The City of Seattle*, 13 Wash. 444, 33 Pac. 367.

Section 1834. Veto Power: The mayor shall have power to veto or sign any ordinance passed by the city council: *Provided*, That an ordinance vetoed by the mayor may be passed over his veto by a vote of two-thirds of the members of the council elected, notwithstanding the veto, and should the mayor neglect or refuse to sign any ordinance and return the same with his objections, in writing, at the next regular meeting of the council, the same shall become a law without his signature.

1899, 5th Ses. p. 193, Sec. 11; 1893, 2d Ses. p. 99, Sec. 11.

MAYOR'S SIGNATURE: Mere lack of the mayor's signature to an ordinance is not fatal where it is expressly provided that if he neglects or refuses to sign or return it with his objections, it shall become a law without his signature.—*Saleno v. Neosho*, 127 Mo. 627, 27 L. R. A. 769, 30 S. W. 190.

PRESIDENT ACTING AS MAYOR: Approval of an ordinance by the acting president of the board of aldermen in the absence of the mayor is sufficient when the statute provides that in the absence of the mayor he shall perform the duties with all the rights, powers, and jurisdiction of the mayor. *Saleno v. Neosho*, supra.

Section 1835. Messages to Council: The mayor shall, from time to time, communicate to the city council such information and recommend such measures as, in his opinion, may tend to the improvement of the finances of the city, the police, health, security, ornament, comfort and general prosperity of the city.

1899, 5th Ses. p. 193, Sec. 12; 1893, 2d Ses. p. 99, Sec. 12.

JUDICIAL POWERS.

Section 1836. Jurisdiction of Police Judge: The police judge shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of the city, and jurisdiction concurrent with that which is or may be conferred upon justices of the peace, of misdemeanors under the laws of the state, arising within the limits of the city, and shall also have jurisdiction for the examination of offenders against the laws of the state, for offenses arising within the city limits.

1899, 5th Ses. p. 194, Sec. 22; 1893, 2d Ses. p. 101, Sec. 22.

Jurisdiction of justices of the peace: Const. Art. V, Sec. 22. Also Penal Code, Chap. CCXXXVI.

POLICE COURTS: The police court of the city and county of San Francisco is an "inferior court" of limited jurisdiction, whose powers are conferred,

and whose duties and mode of procedure are prescribed, and to which the rule applies that the evidence of its proceedings must affirmatively show jurisdiction of the person of the defendant, and over the subject matter. The remark to the contrary in *Ex parte Murray*, 45 Cal. 455, is dictum. *Ex parte Kerney*, 55 Cal. 212.

PROSECUTIONS BY MUNICIPAL COURTS: The proceeding, by a municipal corporation, to enforce such fines and penalties as are ordinarily and by usage enforced by municipalities, is not a criminal prosecution, or criminal in its nature, but only quasi criminal, whatever may be the form of the procedure.—*Ex parte Fagg* (Tex. Cr. App.), 40 L. R. A. 212, 44 S. W. 294.

FALSE IMPRISONMENT: A municipal corporation is not liable in an

action for false imprisonment for damages alleged to have been occasioned to the plaintiff by reason of his imprisonment on a judgment rendered against him by a municipal court for the violation of an ordinance. This is true although such judgment may have been illegal, erroneous, and even void.—*Bartlett v. City of Columbus*, 101 Ga. 300, 44 L. R. A. 795, 28 S. E. 599.

Note.—For a full discussion of the liability of a municipality for false imprisonment, see note 44 L. R. A. 795.

Section 1837. Court Days: The police judge shall be a conservator of the peace, and his court shall be open every day except Sunday, to hear, try, and determine all cases cognizable before him, and he shall have power to bring parties forthwith to trial.

1899, 5th Ses. p. 196, Sec. 35; 1893, 2d Ses. p. 103, Sec. 35.

Section 1838. Warrant, Issue and Service of: Whenever complaint shall be made to the police judge on oath or affirmation, of any person competent to testify against the accused, that an offense has been committed, of which the police judge has jurisdiction, the police judge shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the sheriff or constable of the county, or some person specially appointed in writing indorsed on the process by the police judge for that purpose, and whose return shall be made under oath.

1899, 5th Ses. p. 194, Sec. 23; 1893, 2d Ses. p. 101, Sec. 23.

Section 1839. Hearing Complaint: When any person shall be brought before the police judge upon such warrant, it shall be his duty to hear and determine the complaint alleged against the defendant.

1899, 5th Ses. p. 195, Sec. 25; 1893, 2d Ses. p. 101; Sec. 25.

Section 1840. May Postpone Trial, When: Upon good cause shown, the police judge may postpone the trial of the case to a certain day, in which case he shall require the defendant to enter into recognizance with sufficient security, conditioned that he will appear before the said judge at the time and place appointed, then and there to answer the complaint alleged against him.

1899, 5th Ses. p. 195, Sec. 26; 1893, 2d Ses. p. 101, Sec. 26.

Section 1841. Certifying Cases to District Court: In case of the breach of any recognizance entered into as aforesaid the same shall be certified to the district court of the proper county to be proceeded upon according to law: if in the progress of any trial before said judge it shall appear that the accused ought to be put upon his trial for an offense not cognizable before said judge, he shall immediately stop all further proceedings before him, and proceed as in other cases cognizable before the district court.

1899, 5th Ses. p. 195, Sec. 27; 1893, 2d Ses. p. 101, Sec. 27.

Section 1842. Attendance of Witnesses: It shall be

the duty of said judge to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance, by attachment if necessary, and all witnesses shall receive the sum of fifty cents for each day's attendance.

1899, 5th Ses. p. 195, Sec. 28; 1893, 2d Ses. p. 102, Sec. 28.

Section 1843. Postponed Trial; Duty of Witnesses:

When a trial shall be continued by a judge, it shall not be necessary to summons any witnesses who may be present at the continuance, but the judge shall verbally notify such witnesses as either party may require, to attend before him to testify before him in the case on the day set for trial, which verbal notice shall be as valid as a summons.

1899, 5th Ses. p. 196, Sec. 34; 1893, 2d Ses. p. 103, Sec. 34.

Section 1844. No Jury Except Upon Demand: Cases in the police court arising under the ordinances of the city shall be tried and determined by the police judge without the intervention of a jury, unless the defendant demand a trial by jury, and when a demand shall be so made the trial shall be by a jury of six competent men, and shall be conducted in the same manner as trials before justices of the peace for misdemeanors arising under the general laws of the state.

1899, 5th Ses. p. 195, Sec. 29; 1893, 2d Ses. p. 102, Sec. 29.

Section 1845. Judgment on Conviction: If the defendant is found guilty, the said judge shall declare and assess the punishment and render judgment accordingly; it shall be part of the judgment that the defendant stand committed, until the judgment is complied with.

1899, 5th Ses. p. 195, Sec. 30; 1893, 2d Ses. p. 102, Sec. 30.

Section 1846. Prisoner Shall be Required to Work: Whenever the defendant is sentenced to imprisonment for the violation of a city ordinance, he shall be put to work for the benefit of the city, under direction of the mayor, for the term of his imprisonment: and when committed for the non-payment of a fine or costs, for the violation of any ordinance, he shall also be put to work for the benefit of the city, and shall be credited on such fine and costs one dollar and fifty cents per day for each day he shall work.

1899, 5th Ses. p. 195, Sec. 31; 1893, 2d Ses. p. 102, Sec. 31.

Section 1847. Defendant Discharged, How: Any defendant committed under the provisions of this chapter for a misdemeanor arising under the laws of this state may be discharged in the same manner as if he had been committed by the district court.

1899, 5th Ses. p. 195, Sec. 32; 1893, 2d Ses. p. 102, Sec. 32.

Section 1848. Power to Enforce Judgments; Contempt: The police judge shall have the power to enforce due obedience to all orders, rules, judgments, and decrees made by him and may fine or imprison for contempt offered to such judge while

holding his court, or to process issued by him, in the same manner, and to the same extent as the district court.

1899, 5th Ses. p. 196, Sec. 38; 1893, 2d Ses. p. 103, Sec. 38.

Contempts: Code Civil Proc., Chap. CLXXVII.

Section 1849. When Proceedings in Justice Court Govern: In all cases not herein especially provided for, the process, proceedings, and trial before the judge shall be governed by laws regulating proceedings in justices' courts in criminal cases.

1899, 5th Ses. p. 195, Sec. 33; 1893, 2d Ses. p. 102, Sec. 33.

Section 1850. Appeals, How Taken: Appeals may be taken from the judgments of the police judge, in the same manner as appeals are taken from the judgments of justices of the peace in criminal cases.

1899, 5th Ses. p. 196, Sec. 36; 1893, 2d Ses. p. 103, Sec. 36.

APPEALS: Penal Code, Chap. CCXXXVII.

Section 1851. Justice of the Peace to Act as Police Judge, When: In case of a vacancy in the office of police judge by death, resignation or otherwise, or in the case of the absence, interest or disability of such judge to perform his duty, it shall be the duty of an acting justice of the peace of the precinct in which such city is situated, and he may be designated by the mayor, to act as judge, during such vacancy, absence or disability in the trial of causes cognizable before said judge.

1899, 5th Ses. p. 196, Sec. 37; 1893, 2d Ses. p. 103, Sec. 37.

Section 1852. Disposition of Fines and Penalties: All fines and penalties collected, arising from a breach of ordinances of the city shall be paid to the city treasurer; and all fines and penalties collected arising from misdemeanors under the laws of the state shall be paid to the county treasurer.

1899, 5th Ses. p. 195, Sec. 24; 1893, 2d Ses. p. 101; Sec. 24.

SPECIAL BONDS FOR STREET IMPROVEMENT.

Section 1853. This Subdivision Applicable to What Cities: That all incorporated cities of this state, in which at the last preceding city election held prior to the filing of the petition, or the casting of the vote of the members of the city council mentioned in section 1817, there were cast seven hundred, or more, votes for mayor, shall have the powers and be subject to all the provisions of this subdivision; and this subdivision shall be applicable to all such cities either organized or incorporated under general laws or the special or local laws of this state.

1899, 5th Ses. p. 244, Sec. 1; 1895, 3d Ses. p. 41, Sec. 1.

Section 1854. Contract for Improvements: When the council of any city shall direct the paving or curbing of, or the construction of sidewalks on any street or streets, they shall make and enter into a contract for furnishing materials and for the paving or curbing or construction of sidewalks, as the case may be, of such street or streets, either for the entire work in one contract or parts

thereof, in separate and specified sections, as to them may seem best: *Providd*, That no work shall be done under any such contract until a certified copy thereof shall have been filed in the office of the city clerk.

1899, 5th Ses. p. 244, Sec. 2; 1895, 3d Ses. p. 41, Sec. 2.

The letting of a contract to do public work by a city council is an ad-

ministrative and not a judicial or quasi judicial act.—*Adleman v. Pierce et al.* (Idaho), 55 Pac. 658.

Section 1855. Contracts, How Made: All such contracts shall be made by the council in the name of the city upon such terms of payment as shall be fixed by the council, and shall be made with the lowest and best bidder upon sealed proposals, after public notice for not less than three weeks, in at least two newspapers of said city, which notice shall contain a description of the kind and amount of work to be done and material to be furnished as nearly accurate as practicable.

1899, 5th Ses. p. 244, Sec. 3; 1895, 3d Ses. p. 41, Sec. 3.

Section 1856. Contractor Must Give Bond: Each contractor shall be required to give a bond to the city, with sureties to be approved by the council, for the faithful performance of the contract, and the council shall have power to institute suit in the name of the city to enforce all such contracts.

1899, 5th Ses. p. 244, Sec. 4; 1895, 3d Ses. p. 42, Sec. 4.

Section 1857. Duty of City Engineer: It shall be the duty of the city engineer to furnish the council with proper grades and lines and see that the work is done in accordance with the ordinances and regulations of the city with respect to said grades and lines.

1899, 5th Ses. p. 244, Sec. 5; 1895, 3d Ses. p. 42, Sec. 5.

Section 1858. Council May Authorize Improvement, When: The council of any such city shall have no right to authorize any improvement under this subdivision unless the owners of two-thirds of the feet front of the property abutting upon the street or streets to be improved shall first petition therefor, or unless the same shall be voted for by three-fourths of the members of the council.

1899, 5th Ses. p. 244, Sec. 6; 1895, 3d Ses. p. 42, Sec. 6.

PETITION OF OWNERS: A board of public works cannot reject a paving petition out of fear that it would establish a bad precedent.—*Rhodes v. Board of Public Works* (Col. App.), 49 Pac. 430. The jurisdiction of the common council depends upon the fact that the owners of the requisite one-half had petitioned and not upon its findings and determination concerning such fact, nor does the absolute averment of the fact in any form in the petition confer jurisdiction unless the truth of the averments can be maintained.—*Allen v. The City of Portland* (Or.), 58 Pac. 509. Where corpor-

ations sign a petition for public improvements, it need not attach its corporate seal in order to make the signing effective.—*Id.* And where petition for public improvement shows on its face that the names of property owners affixed thereto were signed by agents, authority of such agents will be presumed and need not appear thereon, but may be proved by evidence dehors the record.—*Id.* Signing of a petition for public improvements by owners of the undivided two-thirds of a lot is sufficient to warrant the counting of such lot in estimating the aggregate of property petitioning for the improvement.—*Id.*

Section 1859. May Issue and Sell Bonds: For the purpose of paying the costs and expenses incurred in making such improvements, or either, or any thereof, such city is empowered to issue bonds and sell the same in the manner herein provided.

1899, 5th Ses. p. 244, Sec. 7; 1895, 3d Ses. p. 42, Sec. 7.

Every purchaser of a municipal bond is chargeable with notice of the statute under which the bond was issued. If the statute gives no power to make

the bond, the municipality is not bound. — *United States v. Macon County*, 99 U. S. 582. To the same effect is *Peoples' Bank v. School District No. 52*, 3 N. Dak. 496, 28 L. R. A. 642, 57 N. W. 787.

Section 1860. Bond Issue Must be Submitted to Electors: Before any such bonds are issued, the mayor and common council of such city must, by resolution passed at a regular meeting, declare the purpose or purposes for which such bonds are to be issued, and the total amount. They must also, by ordinance, provide for the holding of a special election of the qualified voters of such city, which shall be conducted as other city elections, at which election there shall be submitted to such electors the question of issuing such bonds for the purpose named in such resolution. The voting at such election must be by ballot, on which ballot must be written or printed:

“For bonds and debt (here separately naming the purpose or purposes for which said bonds shall be issued and said debt incurred),” or “against bonds and debt (here separately naming the purpose or purposes for which such bonds shall be issued and such debt incurred).”

If it shall appear upon a canvass of such ballots that two-thirds of such qualified voters voting at such election assent to the issuing of such bonds and the incurring of the indebtedness thereby created for any one or more of the purposes named in such resolution, such bonds for said purpose or purposes shall be issued in the manner herein provided.

1899, 5th Ses. p. 245, Sec. 8; 1895, 3d Ses. p. 42, Sec. 8.

Section 1861. Bonds, Denominations, Manner of Payment: Said bonds shall be known as municipal improvement coupon bonds of (name city, county and state) and shall be issued as near as practicable in denominations of five hundred dollars each, but bonds of the denomination of one hundred dollars may be issued when necessary, and each bond shall be payable in seven years from the date of its issuance, and must have attached seven coupons maturing and payable and for the amounts as follows:

The first coupon shall be payable one year from the date of the issuance of the bond in an amount equal to one-seventh of the principal of the bond with interest on the total amount of the bond for one year; the second coupon shall be payable in two years from the date of the issuance of the bond in an amount equal to one-seventh of the principal of the bond with interest on six-sevenths of the principal of said bond for a period of one year; the third coupon shall be payable in three years from the date of issuance of said bond in an amount equal to one-seventh of the principal of the bond with in-

terest on five-sevenths of the principal of said bond for one year; the fourth coupon shall be payable in four years from the date of the issuance of the bond in an amount equal to one-seventh of the principal of said bond with interest on four-sevenths of the principal of said bond for one year; the fifth coupon shall be payable in five years from the date of the issuance of the bond in an amount equal to one-seventh of the principal of said bond with interest on three-sevenths of the principal of said bond for one year; the sixth coupon shall be payable in six years from the date of the issuance of the bond in an amount equal to one-seventh of the principal of the bond with interest on two-sevenths of the principal of said bond for one year; and the seventh coupon shall be payable in seven years from the date of issuance of said bond in an amount equal to one-seventh of the principal of said bond with interest on one-seventh of the principal of said bond for one year. Upon the payment of the seventh coupon, as above provided, said bond shall be come null and void. The rate of interest must not exceed seven per cent. per annum.

1899, 5th Ses. p. 245, Sec. 9; 1895, 3d Ses. p. 43, Sec. 9.

The invalidity of municipal bonds because the term is shorter than that prescribed by statute, does not affect the liability, if any, of the municipal-

ity upon the debt thus secured, and the holders may fall back on the original transaction and recover.—Peoples' Bank v. School District No. 52, 3 N. Dak. 496, 28 L. R. A. 642, 57 N. W. 787.

Section 1862. Bonds, Statements in; Signatures: The bonds mentioned in the preceding section must be signed by the mayor and attested by the city clerk and bear the city seal and be countersigned by the city treasurer, and the coupons attached to such bonds must be signed by the city treasurer. Each coupon must have annexed to the same a number corresponding with the number of the bond, and each bond must state upon its face the amount for which the same is issued, to whom issued and the date of issue, and must also recite that it is issued in conformity with the provisions of this subdivision.

1899, 5th Ses. p. 245, Sec. 10; 1895, 3d Ses. p. 43, Sec. 10.

Section 1863. Bonds, General Provisions Concerning The said mayor and common council must give three weeks' notice by publication in some newspaper published in such city, of its intention to issue and negotiate such bonds, and invite bidders therefor, and after ascertaining the best terms upon, and the lowest interest at which such bonds can be negotiated, must secure the proper engraving and printing thereof, and must thereafter have them consecutively numbered and otherwise properly prepared and executed; and when so executed, they must be by the city clerk registered in a public record book to be kept for that purpose, and therein must be stated the number, date, amount of bond, time and place of payment, rate of interest, number of coupons attached and any other proper description thereof for future identification. That then said mayor and common council must from time to time, in such amounts as they may deem best, deliver said bonds to the city

treasurer and take and file his receipt therefor, and charge him with all bonds so delivered; and any duties required of said mayor and common council by virtue of this subdivision may be performed at any general, special or called meeting thereof. The city treasurer must, under the general supervision of said mayor and common council, sell said bonds for cash, and in no case must said bonds be sold for less than the face or par value and the accrued interest at the time of disposal. All proceeds derived from the sale of said bonds must be applied exclusively to the purposes for which said bonds are issued. And in no case must any more of said proceeds be expended for any one purpose than the amount named in the resolution of said mayor and common council above mentioned. Said city treasurer must keep a record of all bonds disposed of by him, showing their number, rate of interest, date and amount of sale, and when, where and to whom payable, which record he must keep open for the inspection of the public at all reasonable office hours, and he must make such detailed statements to, and as often as required by said mayor and common council of all his transactions under these provisions. Should the tax for the payment of interest and installment of principal on any of the bonds issued under these provisions at any time not be collected in time to meet such payment, the interest and such installments must be paid out of any moneys in the city general or expense fund, and the moneys so used for such payment must be repaid to the fund from which so taken out of the first moneys collected from the assessments hereinafter provided.

1899, 5th Ses. p. 246, Sec. 11; 1895, 3d Ses. p. 44, Sec. 11.

Section 1864. Money from Bonds, How Kept and Paid: All moneys received by the city treasurer from the sale of said bonds, shall be kept by him in a separate fund and paid out on requisition of the council, accompanied by affidavit of the city engineer, that work has been done or material furnished to the amount of said requisition and that it is required for payment of the same, and all moneys received by said treasurer shall be kept in the same manner, and subject to the regulations regarding other money of the city, except that he shall keep a separate account of the same and all interest received upon the same shall be credited to such fund.

1899, 5th Ses. p. 246, Sec. 12; 1895, 3d Ses. p. 45, Sec. 12.

Section 1865. Cost of Improvements, How Assessed: When any such improvement shall have been completed, it shall be the duty of the council to ascertain the entire amount of the bonds sold, and the interest thereon, to the date of completion, which shall be taken to be the cost of such improvement, and such costs shall then be assessed as shall be provided by law or by ordinance of such city, upon the property fronting or abutting upon such improvement: *Provided*, Nothing herein shall be construed as authorizing the assessment of any such cost on property belonging to the state.

1899, 5th Ses. p. 246, Sec. 13; 1895, 3d Ses. p. 45, Sec. 13.

Section 1866. Making Plat and Giving Notice

Thereof: The council shall cause a plat to be made of the street or streets on which any such improvement shall be made, showing the separate lots of ground, and the names of the several owners, and shall make or cause to be made a list or schedule of the names of all such owners, and the amount assessed against each lot or piece of ground, and shall give two weeks' public notice in two newspapers in the city, and by hand bills posted in conspicuous places, on the line of such street or streets, of the time and place where, for the period of twenty days thereafter, the same may be seen for the correction of errors, and after having corrected such errors as may be made known to them, they shall file the same in the office of the city clerk.

1899, 5th Ses. p. 247, Sec. 14; 1895, 3d Ses. p. 45, Sec. 14.

Section 1867. Assessment, How Paid: Said assessment shall be certified by the mayor of the city and attested by the city clerk and delivered to the county assessor who shall place the same upon the city assessment roll, and said assessment shall be payable at the office of the city tax collector in seven equal installments, with interest at seven per cent. per annum from the date of the assessment upon the unpaid portion thereof, the first of which, with interest on the whole amount at seven per cent., shall be payable at the first annual payment of taxes next succeeding the time said assessment is placed upon the tax roll, and the others annually thereafter, and said assessment shall be collected in the same manner as other city taxes.

1899, 5th Ses. p. 247, Sec. 15; 1895, 3d Ses. p. 45, Sec. 15.

Section 1868. Assessment a Lien, on What: Said assessments, with interest accruing thereon, shall be a lien upon the property abutting upon the street or streets on which any such improvement is made from the commencement of the work, and shall remain a lien until fully paid and shall have precedence over all other liens excepting ordinary taxes and shall not be divested by any judicial sale: *Provided*, That such lien shall be limited to the lots bounding or abutting on such street or streets, and not exceeding in depth therefrom one hundred and fifty feet.

1899, 5th Ses. p. 247, Sec. 16; 1895, 3d Ses. p. 46, Sec. 16.

Section 1869. Assessments, How Proceeds Used: All moneys received from assessments shall be appropriated to the payment of the interest and redemption or payment of the bonds that shall be issued for said improvements, and if any interest shall become due on any of said bonds, where there is no funds from which to pay the same, the council shall be authorized to make a temporary loan for the payment thereof.

1899, 5th Ses. p. 247, Sec. 17; 1895, 3d Ses. p. 46, Sec. 17.

Section 1870. Mistake Does Not Vitate Lien: Any mistake in the description of the property or in the name of the owner shall not vitiate the lien.

1899, 5th Ses. p. 247, Sec. 18; 1895, 3d Ses. p. 46, Sec. 18.

Section 1871. Part of Street May be Improved: Any part or section of any street may be improved under this subdivision as well as an entire street.

1899, 5th Ses. p. 247, Sec. 19; 1895, 3d Ses. p. 47, Sec. 19.

CHAPTER LXXI.

VILLAGES.

Section.

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GENERAL PROVISIONS.

Section 1872. What Constitutes a Village. How

Created: Any town or village containing not less than two hundred nor more than one thousand inhabitants, now incorporated as a city, town or village, under the laws of this state, or that shall hereafter become organized pursuant to the provisions of this title, and any city of the second class which shall have adopted village government as provided by law, shall be a village, and shall have the rights, powers and immunities hereinafter granted, and none other, and shall be governed by the provisions of this subdivision: *Provided*, That cities of the second class heretofore incorporated, and containing not more than fifteen hundred inhabitants, shall continue to be and exercise the powers of cities of the second class, and the officers thereof shall continue to exercise the powers conferred herein upon officers of such cities, until the first general election held therein, and the qualifications of village officers elected at said election: *Provided*, further, That whenever a majority of the taxable inhabitants of any town or village, not heretofore incorporated under any law of this state, shall present a petition to the county board of the county in which said petitioners reside, praying that they may be incorporated as a village, designating the name they wish to assume and the metes and bounds of the proposed village; and if such county board, or a majority of the members thereof, shall be satisfied that a majority of the taxable inhabitants of the proposed village have signed such petition, and that inhabitants to the number of two hundred or more are actual residents of the territory described in the petition, the said board shall declare the said proposed village incorporated, entering the order of incorporation upon their records, and designating the metes and bounds thereof; and thereafter the said village shall be governed by

the provisions of this title applicable to the government of villages. And the said county board shall, at the time of the incorporation of said village, appoint five persons having the qualifications provided in section 1875, as trustees who shall hold their offices and perform all the duties required of them by law, until the election and qualification of their successors at the time and in the manner hereinafter provided.

1889, 5th Ses. p. 197, Sec. 40; 1893, 2d Sec. 1885.
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Section 1873. Filling Vacancies; Election Officers:

If, on any day appointed for holding any election in any village, any of the judges or clerks of election shall fail to attend, the electors present may fill such vacancies from among the qualified electors present.

1899, 5th Ses. p. 199, Sec. 51; 1893, 2d Ses. p. 107, Sec. 51.

OFFICERS OF VILLAGES.

Section 1874. Powers Vested in Board of Trustees:

The corporate powers and duties of every village shall be vested in the board of trustees, to consist of five members.

1899, 5th Ses. p. 197, Sec. 41; 1893, 2d Ses. p. 105, Sec. 41.

Section 1875. Qualifications of Trustees—Term of Office: Any person may be a trustee who shall have attained the age of twenty-one years, and shall be a male citizen of the United States, or declared his intention to become such, who shall have been an inhabitant and taxpayer of the village at the time of his election, and resided therein for three months next preceding; and every trustees so elected shall hold his office for the term of one year; and until a successor is elected and qualified.

1899, 5th Ses. p. 197, Sec. 42; 1893, 2d Ses. p. 105, Sec. 42.

Section 1876. Oath of Office. Meetings: Every trustee before entering upon the duties of his office, shall take an oath to support the Constitution of the United States and the Constitution of the State of Idaho and faithfully and impartially to discharge the duties of his office; and every board of trustees shall assemble within twenty days after their appointment or election, and choose a chairman from their number. The board of trustees shall by ordinance fix the time and place of holding their stated meetings and may be convened at any time by the chairman.

1899, 5th Ses. p. 198, Sec. 43; 1893, 2d Ses. p. 106, Sec. 43.

Section 1877. Compensation of Officers: The trustees shall receive no compensation. The compensation of all other officers shall be fixed by ordinances.

1899, 5th Ses. p. 198, Sec. 48; 1893, 2d Ses. p. 107, Sec. 48.

POWERS AND DUTIES.

Section 1878. Quorum. Compelling Attendance: At all meetings of the board a majority of the trustees shall constitute

a quorum to do business; a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as the board of trustees by ordinance may have previously prescribed.

1899, 5th Ses. p. 198, Sec. 44; 1893, 2d Ses. p. 106, Sec. 44.

Section 1879. Journal of Proceedings: The board of trustees shall keep a journal of their proceedings, and at the desire of any member shall cause the yeas and nays to be taken and entered on the journal, on any question or ordinance, and the proceedings shall be public.

1899, 5th Ses. p. 198, Sec. 45; 1893, 2d Ses. p. 106, Sec. 45.

Section 1880. Enumeration of Powers: Such board of trustees shall have power to pass by-laws, and ordinances to prevent and remove nuisances, to prevent, restrain and suppress bawdy houses, gambling houses and other disorderly houses, within the limits of such village, to restrain and prohibit gambling; to provide for licensing and regulating theatrical and other amusements within such village; to establish night watches; to provide pest houses; to prevent the introduction and spread of contagious diseases; to establish and regulate markets; to erect and repair bridges; to erect, repair and regulate wharves, and the rates of wharfage to regulate the landing of steamboats, rafts and other water crafts; to provide for the inspection of lumber, building materials, and provisions, to be used or offered for sale in such village, or to be exported therefrom; to require and regulate the planting and protection of shade trees in the streets, and the building of stairways, railways, doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, and other excavations through and under the sidewalks of such village; and in addition to the special powers herein conferred and granted, maintaining the peace, good government and welfare of the town or village, and its trade, commerce and manufacturies, and to enforce all ordinances by inflicting penalties upon inhabitants or other persons, for the violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment until the amount of said judgment and costs shall be paid.

1899, 5th Ses. p. 198, Sec. 46; 1893, 2d Ses. p. 106, Sec. 46. See note to Secs. 1833, 1916.

Section 1881. Shall Appoint Certain Officers: Such board of trustees shall appoint a clerk, treasurer, and attorney, and they may also appoint such night watch and police as may be necessary, who shall have power to arrest all offenders against the law of the state, or of the village, by day or by night, in the same manner as the sheriff or constable, and keep them in the village prison or other place, to prevent their escape, until trial can be had before the proper officer.

1901, 6th Ses. p. 133.

Section 1882. Duties of Chairman: The chairman of such board of trustees shall cause to be printed and published the

by-laws and ordinances, for the information of the inhabitants, and cause the same to be carried into effect, and in case of the absence of the chairman of the board from any meeting of the board of trustees, such board shall have power to appoint a chairman pro tempore, who shall, for the time being, exercise and have the powers, and perform the same duty, as the regular chairman.

1899, 5th Ses. p. 198, Sec. 49; 1893, 2d Ses. p. 107, Sec. 49.

Section 1883. Notice of Elections: The board of trustees shall give public notice of the time and place of holding elections; said notice to be given not less than ten nor more than twenty days previous to the election.

1899, 5th Ses. p. 199, Sec. 50; 1893, 2d Ses. p. 107, Sec. 50. Annual election, when held: Sec. 1904.

Section 1884. Justices of the Peace Have Jurisdiction in Villages: Justices of the peace of any precinct in which any village or any part thereof may be situated, and justices of the peace elected in said village, shall have jurisdiction to hear, try and determine all offenses against the general ordinances of such village, and for that purpose may issue warrants for the arrest of any alleged offender, upon information under oath as in other cases; and upon the arrest of the defendant by the sheriff or any constable of the county, shall proceed thereon in all respects in the same manner and with the same powers as against persons charged with a misdemeanor under the general laws of the state; and the justice by or before whom such proceedings shall be had, and the officer making such arrest, shall be entitled to the same fees, to be collected in the same manner as in cases of prosecutions for misdemeanors.

1899, 5th Ses. p. 199, Sec. 52; 1893, 2d Ses. p. 107, Sec. 52.

ADOPTION OF VILLAGE GOVERNMENT.

Section 1885. City May Adopt Village Government: Whenever any city of the second class, containing more than fifteen hundred inhabitants desires to discontinue its organization as a city and organize as a village, and one-fourth of the legal voters of such city shall petition the city council, the council shall cause to be published for at least thirty days, a notice stating that the question of adopting village government will be submitted at the next annual city election. The form of the ballot shall be, "for organization as a village" and "against organization as a village;" and at the same election the qualified voters shall also vote for five trustees for the village. If a majority of the votes cast are "for organization as a village," then such city shall, within sixty days after such election be and become a village, and be governed under the provisions of the law relating to villages, unless it shall at some future annual city election adopt a city government, in the manner provided herein for its adoption of village government.

1899, 5th Ses. p. 199, Sec. 53; 1893, 2d Ses. p. 108, Sec. 53.

Section 1886. Change From City to Village, When Affected: If village government shall have been adopted as afore-

said, the board of trustees shall at the expiration of sixty days from said election enter upon the duties of their offices and all books, papers, records, money and property of such city shall be delivered over to the board of trustees, and the authority of the city council and all city officers shall cease from and after the taking effect of village government in such city.

1899, 5th Ses. p. 199, Sec. 54; 1893, 2d Ses. p. 108, Sec. 54.

Section 1887. City Ordinances in Force, How Long:

All ordinances of the city shall remain and be in full force in the village, until amended or repealed by the board of trustees, and the board shall provide for the payment of the city indebtedness and levying necessary taxes thereof, as if the same had been incurred by the village.

1899, 5th Ses. p. 199, Sec. 55; 1893, 2d Ses. p. 108, Sec. 55.

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BODIES CORPORATE.

Section 1888. Corporate Powers: Cities of the second class and villages governed by this title, shall be bodies corporative and politic, and may sue and be sued; contract or be contracted with, acquire, hold and convey property real or personal; have a common seal, which they may change and alter at pleasure; and such other powers as may be conferred by law. Provided, That real property shall only be conveyed by the proper authorities of such city or village when so authorized by a vote of the electors thereof.

1899, 5th Ses. p. 199, Sec. 56; 1893, 2d Ses. p. 108, Sec. 56.

POWER OF TRUSTEES TO DIS-SOLVE: There is no method provided under our statutes where the trustees of a town can dissolve the corporation or effect a disincorporation, and it is not within the power of such trustees to abandon such corporation and procure a reincorporation. Moreover, the

board of county commissioners cannot reincorporate a town having already a valid corporate existence, and all acts done by a board of trustees of a lawfully incorporated town in an attempt to abandon or disincorporate such municipality and set up a new government, was without authority and void. —People v. Bancroft, 2 Idaho, 1077, 29 Pac. 112.

Section 1889. Corporate Name. Process, on Whom Served: The corporate name of each city or village governed by this title shall be, the "city (or village) of———" and all and every process and notice whatever affecting such corporation, shall be served upon the mayor or chairman of the board of trustees, and in his absence, upon the clerk, or in the absence of such officers, then by leaving a certified copy at the office of the clerk.

1899, 5th Ses. p. 200, Sec. 57; 1893, 2d Ses. p. 109, Sec. 57.

Section 1890. Preservation of Vested Rights: All rights and privileges which have accrued to any city, town or village and are held by an officer of such corporation, under or by virtue of any act of the legislature of the Territory or State of Idaho, or any

act of the congress of the United States, before the taking effect of this title, are hereby preserved to such cities, towns or villags, and all its said trusts, rights and privileges shall be transmitted to and be vested in such latter corporation, and all actions heretofore commenced by or against any city, or town which shall be or become a city or village under the provisions of this title, shall be in no manner affected, but all such actions shall be continued to final judgment and satisfaction as if this title had not been passed.

1899, 5th Ses. p. 200, Sec. 58; 1893, 2 d Ses. p. 109, Sec. 58.

OFFICERS AND THEIR DUTIES.

Section 1891. Duties of City or Village Clerk: The city or village clerk shall have the custody of all laws and ordinances and shall keep a correct journal of the proceedings of the council or board of trustees; he shall also keep a record of all outstanding bonds against the city or village, showing the number and amount of each, for and to whom the said bonds were issued; and when any bonds are purchased or paid or cancelled, said record shall show the fact, and in his annual report, he shall describe particularly, the bonds issued and sold during the year, and the terms of sale, with each and every item of expense thereof; he shall also perform such other duties as may be required by the ordinances of the city.

1899, 5th Ses. p. 200, Sec. 63; 1893, 2d Sese. p. 110, Sec. 63.

A provision in a city charter that "all demands and accounts against the city must be presented to the clerk with the necessary evidence in support thereof, and he must submit the same to the council, who shall, by a vote, di-

rect whether the same shall be paid, or any part thereof, as they may deem just and legal," does not apply to torts, but to those demands upon which actions *ex contractu* may be brought.—*Giffen et ux. v. City of Lewiston* (Idaho), 55 Pac. 545.

Section 1892. Accurate Accounts of Funds Must be Kept: It shall be the duty of the council or board of trustees in every incorporated town, city or village within the State of Idaho, to cause to be kept an accurate account of all moneys received; the sources from whence derived, and all moneys expended, and the purposes to which applied.

1899, 5th Ses. p. 201, Sec. 65; 1893, 2 d Ses. p. 16, Sec. 1.

Section. 1893. Duties of Treasurer: The treasurer of each city or village shall be the custodian of all money belonging to the corporation; he shall keep a separate account of each fund or appropriation, and the debits and credits belonging thereto; he shall give to every person paying money into the treasury a receipt therefor specifying the date of payment, and on what account paid; he shall also file copies of such receipts with his monthly reports; he shall at the end of each and every month, and as often as may be required, render an account to the city council or board of trustees, under oath showing the state of the treasury at the date of such account, and the balance of money in the treasury; he shall also accompany such accounts with a statement of all receipts and disbursements, together with all warrants redeemed and paid by him, which

said warrants, with any and all vouchers held by him, shall be filed with said account in the clerk's office, and if said treasurer neglect or fail for the space of ten days from the end of each and every month, to render his said account, his office shall be declared vacant, and the city council or board of trustees shall fill the vacancy by appointment until the next election for city or village officers.

1899, 5th Ses. p. 201, Sec. 64; 1893, 2d Ses. p. 110, Sec. 64.

Section 1894. Treasurer to Publish Quarterly Statement: It shall be the duty of the treasurer of such towns, cities and villages to cause to be published for at least one insertion in some newspaper within said town, city or village between the first and second Mondays of January, April, July and October of each year a full statement of the receipts and expenditures of said town, city or village, giving the source from whence received; to what purpose applied and to whom paid.

1899, 5th Ses. p. 201, Sec. 66; 1893, 2d Ses. p. 16, Sec. 2.

Section 1895. Council or Trustees to Provide for Publication: For the purpose of causing these reports to be published as required the council or trustees of every city, town or village shall make such provision as may be necessary.

1899, 5th Ses. p. 201, Sec. 67; 1893, 2d Ses. p. 17, Sec. 3.

Section 1896. Treasurer Required to Keep Money, Where: The treasurer may be required to keep all money in his hands belonging to the corporation in such place or places of deposit as may be provided by ordinances, but no such ordinance shall be passed by which the custody of such money shall be taken from the treasurer and deposited elsewhere than in some regularly organized bank, nor without a bond to be taken from such bank, in such penal sum and with such security as the council or board of trustees shall direct and approve, sufficient to save the corporation from any loss, but such penal sum shall not be less than the estimated receipts for the current year from taxes and special assessments levied and to be levied by the corporation.

1899, 5th Ses. p. 201, Sec. 69; 1893, 2d Ses. p. 111, Sec. 65.

Section 1897. Failure of Treasurer to Perform Duty, Penalty: A failure upon the part of the treasurer of any town, city or village to comply with the requirements of this chapter shall be deemed a misdemeanor.

1899, 5th Ses. p. 201, Sec. 68; 1893, 2d Ses. p. 17, Sec. 4.

Section 1898. City or Village Attorney: The city or village attorney shall be the legal adviser of the council and board of trustees. He shall commence, prosecute, and defend all suits and actions necessary to be commenced, prosecuted or defended on behalf of the corporation or that may be ordered by the council or board of trustees; and when requested, shall attend meetings of the council or board and give them his opinion upon any matters submitted to him either orally or in writing as may be required.

1899, 5th Ses. p. 202, Sec. 71; 1893, 2d Ses. p. 111, Sec. 67.

The duty of the city attorney to attend to all suits, matters, and things in which the city may be legally interested, is not limited to suits in particular courts.—*Buck v. Eureka*, 109 Cal. 504, 30 L. R. A. 409, 42 Pac. 243. He has no power, without authority from the city council to compromise with a railroad company, releasing it from liability for violation of an ordinance requiring flagmen to be kept at crossings.—*Marshall v. C. C. C. & St. L. R. Co.* 80 Ill. App. 531.

AUTHORITY FROM COUNCIL: When an exigency arises involving the

corporate existence of a city and such city finds itself without an attorney, it is within the powers of the mayor and council of such city to employ counsel to protect its interests in such contingency, and their action therein will not be defeated on account of a failure to comply with all the technical details incident to the employment of counsel in ordinary cases.—*Rice v. Gwinn* (Idaho), 49 Pac. 412. But a city cannot delegate to an attorney, appointed to represent it in an action, power to choose an assistant and fix his compensation.—*Knight v. Eureka*, 123 Cal. 192, 55 Pac. 768.

Section 1899. Restrictions Upon Officers: No officer of any city or village shall be interested directly or indirectly in any contract of which the corporation or any one for its benefit is a party; and any such interest in any such contract shall avoid the obligation thereof, on the part of such corporation, nor shall any officer receive any pay or perquisites from the city other than his salary as fixed by ordinance and this chapter; and neither the city council nor board of trustees shall pay or appropriate any money or other valuable thing to any person not an officer, for the performance of any act, service or duty, the doing or performance of which shall come within the proper scope of the duties of any officer of such corporation.

1899, 5th Ses. p. 202, Sec. 72; 1893, 2d Ses. p. 111, Sec. 68.

The law will not permit one who acts in a fiduciary capacity to deal with himself in his individual capacity, whether acting as a sole trustee, or with the board of trustees of which he is a member, or with the directors of a corporation of whom he is one.—*San Diego v. S. D. & L. A. R. R. Co.* 44 Cal. 106. The practice is applicable to all officers and trustees of public and private corporations.—*Santa Ana Water Co. v. Town of San Buena Ventura*, 65 Fed. Rep. 327. But a gas com-

pany having furnished the city of Sacramento with gas, the city was held liable for the reasonable value thereof, though the mayor of the city was a stockholder in and president of the gas company, and the city charter inhibited its officers from being interested in any contracts or sales to the city involving the payment of money from its treasury.—*Capital Gas Co. v. Young*, 109 Cal. 143, 41 Pac. 869.

As to penalty for bribery of a member of the common council, see Penal Code, Sec. 4675.

Section 1900. Emoluments of Office, not to Increase: The emoluments of no officer whose election or appointment is required by this title shall increase or diminish during the term for which he shall have been elected or appointed; and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed when during the same time the emoluments shall have been increased.

1899, 5th Ses. p. 208, Sec. 79; 1893, 2d Ses. p. 120, Sec. 75.

Section 1901. Claims Must be Verified: All claims against the city or village must be presented to the council or trustees in writing, with a full account of the items, verified by the oath of claimant or his agent, that the same is correct, reasonable and just and no claims or demands shall be audited or allowed unless presented and verified as provided for in this chapter; and no costs shall

be recovered against such city or village in any action brought against it for any unliquidated claim which has not been presented to the city council or board of trustees to be audited, nor upon claims allowed in part, unless the recovery shall be for a greater sum than the amount allowed with interest due.

1899, 5th Ses. p. 209, Sec. 84; 1893, 2d Ses. p. 122, Sec. 80.

TORTS: A claim growing out of a tort is not a proper claim for such presentation.—*Giffen v. Lewiston* (Idaho), 55 Pac. 545, likewise, a claim for damages caused by mobs or riots is not to be presented in the first instance to the board of supervisors for their rejection or allowance in whole or in

part, as in the case of the general demands made against the city and county; but a judgment must be first had, which is an adjudication upon the merits and legality of the claim, and after the judgment is rendered, the board of supervisors must order it paid, unless they shall determine to appeal.—*Bank of California v. Shaber*, 55 Cal. 322.

Section 1902. Allowance of Claims: Upon the allowance of claims by the council of trustees, the order for their payment shall specify the particular fund or appropriation out of which they are payable as specified in the annual appropriation bill to be passed in the manner hereinafter provided; and no order or warrant shall be drawn in excess of fifty per centum of the current levy for the purpose for which it is drawn unless there shall be sufficient money in the treasury to the credit of the proper fund for its payment, and no claim shall be audited or allowed except an order or warrant for the payment thereof may legally be drawn.

1899, 5th Ses. p. 209, Sec. 85; 1893, 2d Ses. p. 122, Sec. 81.

Section 1903. Warrants, How Drawn: All warrants drawn upon the treasurer must be signed by the mayor or chairman, and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable, and for what particular object; no money shall be otherwise paid than upon such warrants so drawn. Each warrant shall specify the amount levied and appropriated to the fund upon which it is drawn, and the amount already expended of such fund.

1899, 5th Ses. p. 201, Sec. 70; 1893, 2d Ses. p. 111, Sec. 66.

Where the council of a city organized under the act for the organization of cities and villages, have passed upon and allowed a claim against such city and ordered a warrant upon the city

treasury to issue for the amount thereof, it is the duty of the mayor, upon the presentation of such warrant to him for that purpose, to sign the same, and the performance of such duty may be enforced by mandamus.—*Rice v. Gwinn* (Idaho), 49 Pac. 412.

ELECTIONS.

Section 1904. Annual Election, When Held: On the first Tuesday of April of each year, an election shall be held in each city and village governed by this title, for officers as in this title provided, all of which officers except councilmen shall be elected and hold their respective offices for the term of one year, and until their successors are elected and qualified, at which election the qualified voters of each city or village may cast their ballots between the hours of nine o'clock a. m. and seven o'clock p. m.

1899, 5th Ses. p. 200, Sec. 60; 1893, 2d Ses. p. 110, Sec. 60.

None but taxpayers may vote at bond elections: See Sec. 1938.

Section 1905. Who Entitled to Vote: All qualified electors of this state who shall have resided within the limits of any city of the second class, or village for three months preceding any election therein, shall be entitled to vote at all city and village elections.

1899, 5th Ses. p. 200, Sec. 61; 1893, 2d Ses. p. 110, Sec. 61.

Qualified electors: Const. Art. VI, Sec. 2; also Sec. 786 of this Code.

Section 1906. How Conducted: All elections held in villages or cities as provided for in this title, shall be conducted in manner and form as provided by the general election law of the state.

1899, 5th Ses. p. 214, Sec. 109; 1893, 2d Ses. p. 129, Sec. 105.

General election laws: Title IV.

Section 1907. Certificates of Election: Certificates of election for all offices of cities and villages shall be made out under the corporate seal by the city council or board of trustees, at their first meeting after any election of such officers.

1899, 5th Ses. p. 200, Sec. 62; 1893, 2d Ses. p. 110, Sec. 62.

ORDINANCES.

Section 1908. Style of; Publication; Emergency Ordinances: The style of all ordinances shall be: "Be it ordained by the mayor and council of the city of ——" or "Be it ordained by the chairman and board of trustees of the village of ——" and all ordinances of a general nature shall, before they take effect within one month after they are passed, be published by written or printed handbill or one time in some newspaper published in the city or village, but if no paper be published within said city or village, then in some paper having general circulation therein: Provided, however, That in case of riot, infectious or contagious diseases, or other impending danger, requiring its immediate operation, such ordinances shall take effect upon the proclamation of the mayor or chairman of the board of trustees, posted in at least five public places in the city or village.

1899, 5th Ses. p. 200, Sec. 59; 1893, 2d Ses. p. 109, Sec. 59.

ENACTING CLAUSE: A statute providing that an enacting clause shall read, "be it enacted by the council and town of ——" does not invalidate an ordinance which shows in its title that it is intended as an ordinance of the town because the clause is simply, "be it ordained by the town council."—*State v. Fountain*, 14 Wash. 236, 44 Pac. 270. Where, in the publication of an ordinance, the enacting clause was omitted, it was not the publication of the

whole ordinance, and was not the publication which the law required, and by reason thereof, never went into operation, and no license could be collected under it.—*People v. Russell*, 74 Cal. 578, 16 Pac. 395.

PUBLICATION: A statute providing that all city ordinances shall be published in a newspaper for ten days, held, directory merely and such publication is not a condition precedent to the taking effect of such ordinance.—*City of Sacramento v. Dillman*, 102 Cal. 107, 36 Pac. 385.

Section 1909. Yea and Nay Vote, When. Majority Vote, When: On the passage or adoption of every by-law or ordinance, and every resolution or order to enter into a contract by the council or board of trustees, the yeas and nays shall be called and recorded, and to pass or adopt any by-law, ordinance or any such resolution or order, a concurrence of a majority of the whole number

of members elected to the council or board of trustees shall be required; all appointments of officers by any council or board of trustees shall be made viva voce and the concurrence of a like majority shall be required and the names of those voting and for whom they voted, on the vote resulting in an appointment shall be recorded.

1899, 5th Ses. p. 208, Sec. 80; 1893, 2d Ses. p. 120, Sec. 76.

Under a similar statute, an ordinance concerning misdemeanor was held void where the records of the corporation failed to show that the yeas and nays were recorded in its passage.—*Tracey v. People*, 6 Cal. 151, but it

was held that the resolution of the common council merely authorizing the city engineer to make a survey and map of a proposed street extension was not invalid under a similar New York provision.—*In re Oneida st.* 37 App. Div. 266, 55 N. Y. Supp. 959.

Section 1910. Passage of Ordinances: All ordinances and resolutions, or orders for the appropriation or payment of money shall require for their passage or adoption the concurrence of a majority of all members elected to the council or board of trustees; ordinances of a general or permanent nature shall be fully and distinctly read on three different days, unless three-fourths of the council or trustees shall dispense with the rule; an ordinance shall contain no subject, which shall not be clearly expressed in its title, and no ordinance or section thereof shall be revised or amended unless the new ordinance contain the entire ordinance or section as revised or amended and the ordinance or section so amended shall be repealed.

1899, 5th Ses. p. 209, Sec. 83; 1893, 2d Ses. p. 122, Sec. 79.

SUBJECT EXPRESSED IN TITLE: The state constitutional provision prohibiting any bill from containing more than one subject which shall be expressed in the title does not apply to city ordinances.—*City of Topeka v. Raynor* (Kan.), 58 Pac. 557; *In re Haskell*, 112 Cal. 412, 32 L. R. A. 527, 44 Pac. 725.

A city ordinance prohibiting the sale of intoxicating liquors within its limits, except by persons having a permit under state laws, is not an ordinance to regulate or to prohibit the sale, and the title need not indicate that the ordinance is a "regulation" of the liquor traffic.—*City of El Dorado v. Beardsley*, 53 Kan. 363, 36 Pac. 746. An ordinance providing for the enter-

ing into a contract for the collection and disposal of all garbage, and the charging and collecting from the owners certain fixed prices therefor, is invalid where there is nothing in the title to indicate that a housekeeper or other party having garbage must pay for its removal.—*Kussel v. Erie*, 8 Pa. Dist. R. 105.

An ordinance of a city may be void in part, and valid as to other parts.—*Bellevue Water Co. v. City of Bellevue* (Idaho), 35 Pac. 693.

Municipal corporations may pass ordinances for the punishment of and may punish for the same acts as are punishable under the Penal Code when authorized so to do by the law under which such towns and villages are organized.—*State v. Preston* (Idaho), 38 Pac. 694.

GENERAL POWERS.

Section 1911. May Require Road Poll Tax: Each city and village governed by this title is hereby empowered to provide that all the able bodied male residents of the corporation between the ages of twenty-one and fifty years, shall, between the first day of April and the first day of September of each year, either by themselves or satisfactory substitutes, perform two days' labor upon the streets, alleys or highways within such corporation at such times as the proper officer may direct and upon three days' notice in writing given. They may further provide that for each day's failure to

attend and perform the labor as required at the time and place specified, the delinquent shall forfeit and pay to the corporation any sum not exceeding one dollar for each day's delinquency. The amount so due shall be treated and collected as taxes on property and the same shall be a lien on all the property of such persons that may be listed and assessed for taxation for that year; and it shall be the duty of the city council or trustees to certify the amount due from each individual as aforesaid to the county tax collector as hereinafter provided. And the certificate of the city or village clerk, under the seal of the city, that the person named therein has performed labor as herein required shall be received by the county tax collector in discharge of the amount due from such person.

1899, 5th Ses. p. 207, Sec. 74; 1893, 2d Ses. p. 119, Sec. 71.

County treasurers must hold 25 per cent. of the road tax levied and collected by the county within the corpor-

ate limits of towns and villages for their use to be paid over on proper demand.—City of Genesee v. Latah County (Idaho), 36 Pac. 700.

Section 1912. Stagnant Water, How Disposed of:

Each city and village governed by this title shall have power to cause any lot of land within its limits on which water may at any time become stagnant to be filled up or drained in such manner as may be directed by a resolution of the council or trustees; and such owner or his agent shall, after service of a copy of such resolution or after a publication of the same in some newspaper of general circulation in such corporation for two consecutive weeks, comply with the directions of such resolution within the time therein specified; and in case of a failure or refusal to do so, it may be done by said corporation; and the amount of money so expended shall be assessed against such property, and the amount thereof collected as other special assessments.

1899, 5th Ses. p. 207, Sec. 75; 1893, 2d Ses. p. 119, Sec. 71.

Section 1913. Fines, Collected by Suit: Fines may in all cases, and in addition to any other mode provided, be recovered by suit or action before a justice of the peace or other court of competent jurisdiction in the name of the state, and in any such suit or action where pleadings are necessary, it shall be sufficient to declare generally for the amount claimed to be due in respect to the violation of the ordinance referring to its title and the date of its adoption or passage and showing as near as may be, the facts of the alleged violation.

1899, 5th Ses. p. 207, Sec. 76; 1893, 2d Ses. p. 119, Sec. 72.

Section 1914. Suits for Fines, Barred When: All suits for the recovery of any fine and prosecutions for the commission of any offense made punishable as herein provided, shall be barred in one year after the commission of the offense for which the fine is sought to be recovered or the prosecution is commenced.

1899, 5th Ses. p. 207, Sec. 78; 1893, 2d Ses. p. 120, Sec. 74.

Section 1915. May Use County Jail: Any city or village shall have the right to use the jail of the county for the confinement of such persons as may be liable to imprisonment under the ordi-

nances of such city or village, but it shall be liable to the county for the cost of keeping such prisoners.

1899, 5th Ses. p. 207, Sec. 77; 1893, 2d Ses. p. 120, Sec. 73.

Section 1916. Additional Power to Enact Ordinances; Purposes: In addition to the powers hereinbefore granted cities and villages under the provisions of this title any city or village may, by ordinance or by-laws:

First. Levy taxes for general revenue purposes not to exceed ten mills on the dollar, in any one year, on all the property within the limits of said city or village, taxable according to the laws of the State of Idaho, the valuation of such property to be ascertained from the books or assessment rolls of the tax collector of the proper county.

Second. Levy any other tax or special assessment authorized by law.

Third. Establish, lay out, alter, open any streets or alleys, and improve, repair, grade, sprinkle, light, or drain the same and remove any and all obstructions therefrom, establish grades and construct bridges, cross-walks, culverts and sewers thereon, and repair and maintain the same; cause to be planted, set out and cultivated shade trees along the lines thereof or therein; and defray the expenses of the same out of the general funds of such city or village, not exceeding two mills of the levy for general purposes; but no street shall be graded except the same be ordered to be done by the affirmative vote of two-thirds of the city council or trustees.

Fourth. Provide by general ordinance for the construction and repair of sidewalks and for the laying of temporary plank sidewalks upon the natural surface of the ground, without regard to grades, upon streets not permanently improved, and provide for the assessment of the cost thereof on the property in front of which the same shall be constructed, repaired or laid.

Fifth. Curb, plank, pave, gravel, macadamize or gutter any highway, street or alley therein, in whole or in part, and levy a special tax on the lots and parcels of land fronting on such highway, street or alley, to pay the expense thereof. But, unless a majority of the resident owners of the property subject to assessment for such improvement petition the council or trustees to make the same, such improvement shall be made unless three fourths of all the members of such council or trustees shall, by an affirmative vote, at a regular meeting, assent to and order the same.

Sixth. Assessments made under the provisions of subdivision "fifth" of this section shall be made, assessed and collected in the following manner:

1. The assessment or cost of any work or improvement provided for in subdivision "fifth" of this section, shall be assessed upon the lots and land fronting thereon, each lot being separately assessed for the full debt thereof in proportion to the benefits to the property to be benefited, sufficient to cover the total expense of the work to the center of the street on which it fronts.

2. The expense of all improvements in the space formed by the

junction of two or more streets, or wherein one main street terminates in or crosses another main street, and also all street crossings or crosswalks shall be paid by such city or village.

3. When any work or improvement mentioned in this section is done or made on one side of the center line of said alleys or public ways, the lots fronting on that side only shall be assessed to cover the expenses of said work, according to the provisions of this chapter.

4. The city council or trustees shall, before, or during the grading, paving, or other improvement of any street or alley, the cost of which is to be levied and assessed upon the property benefited, first pass at a special meeting, a resolution or ordinance declaring its intention to make such improvement, and stating in such resolution or ordinance, the name of the street or alley to be improved, the points between which the said improvement is to be made, the general character of the proposed improvement and the estimate of the cost of the same, and that the cost of the same is to be assessed against the property abutting (and included in the assessment district herein provided) on such street proposed to be improved, and shall fix the time, not less than ten days, in which protests against said proposed improvement may be filed in the office of the city clerk. It shall be the duty of such clerk to cause such resolution to be published in the official newspaper of the city in at least two consecutive issues before the time fixed in such resolution for filing such protests, and affidavit of such publication shall be filed on or before the time fixed for such filing. If protests against the proposed improvement by the owners of more than two-thirds of the front feet of lots and lands abutting on such proposed improvement and included in the assessment district therein provided, be filed on or before the date fixed for such filing, the council or trustees shall not proceed further with the work unless three-fourths of the members of said council or board of trustees shall vote to proceed with such work. If no such protest is filed, or if such protest is filed and three-fourths of the council or trustees shall vote to proceed with such work, the council or trustees shall, at its next regular meeting, proceed to consider the same shall then or at a subsequent time proceed to enact an ordinance for such improvement. By the provisions of such ordinance a local improvement district shall be established to be called "local improvement district No. ——" which shall include all the property fronting on the street to be improved between the points named in such resolution, to the distance back from such street, if platted in blocks, to the center of the blocks; if platted in lots only, to the center of the lots, and if not platted to the distance of one hundred and twenty feet. Such ordinance shall provide that such improvement shall be made, and that the cost and expense thereof shall be taxed and assessed upon all the property in such local improvement district, which cost shall be assessed in proportion to the number of feet of such lands and lots fronting thereon, and included in said improvement district, and in proportion to the benefits derived from said improvement: Provided, That the city council or trustees may expend from the general fund

for such purposes such sums as in their judgment may be fair and equitable in consideration of benefits accruing to the general public by reason of such improvements.

The expense of all improvements in the space formed by the junction of two or more streets or where one main street terminates in or crosses another main street, and also all necessary street crossings or cross-ways at corners and intersections of streets, and the expense of establishing, building and repairing bridges in such city shall be paid by such city. The expense incurred in making and repairing sewers in any street shall be paid by the city. When any work or improvement mentioned in this section is done or made on one side of the center lines of said streets, avenues or public highways, the lots or portions of lots fronting on that side only shall be assessed to cover the expenses of said work according to the provisions of this section. Whenever any expenses or cost of work shall have been assessed on any lands, the amount of said expenses shall be a lien upon said lands, which shall take precedence of all other liens, and which may be foreclosed in accordance with the provisions of the code of civil procedure. Such suit shall be in the name of the city of ——— (naming it) as plaintiff, and in any such proceedings where the court trying the same shall be satisfied that the work has been done or material furnished, which, according to the true intent of the act, would be properly chargeable upon the lot or lands through or by which the street, alley or highway improved or repaired may pass, a recovery shall be permitted or a charge enforced to the extent of the proper proportion or the value of the work, or material which would be chargeable on such lot or land notwithstanding any informalities, irregularities or defect in any of the proceedings of such municipal corporation or any of its officers.

5. Upon the passage of an ordinance as herein provided the committee on streets, together with the city engineer, or other proper authority of such city, town or village, shall make out an assessment roll according to the provisions of the said ordinance, and shall certify the same to the council or trustees of such city, town or village.

6. Upon receiving the said assessment roll, the clerk of such city, town or village shall give notice by three successive publications in the official newspaper of such city, town or village, and that such assessment roll is on file in his office, the date of filing of same, and said notice shall state a time at which the council or trustees will hear and consider objections to said assessment roll by the parties aggrieved by such assessments. The owner or owners of any property which is assessed in such assessment roll, whether named or not in such roll, may, within ten (10) days from the last publication provided herein, file with the clerk his objections, in writing, to said assessment.

7. At the time appointed for hearing objections to such assessment the council shall hear and determine all objections which have been filed by any party interested to the regularity of the proceedings in making such assessment and the correctness of such assessment, or of the amount levied on any particular lot or parcel of land; and

the council shall have the power to adjourn such hearing from time to time and shall have power, in their discretion, to revise, correct, confirm or set aside, and to order that such assessment be made de novo, and such council shall pass an order approving and confirming said proceedings and said assessment as corrected by them, and their decision and order shall be a final determination of the regularity, the validity and correctness of said assessment to the amount thereof, levied on each lot or parcel of land.

8. Any person who has filed objections to such assessment or re-assessment, as hereinbefore provided, shall have the right to appeal to the district court of this state and county in which such city or village may be situated.

9. Such appeal shall be made by filing a written notice of appeal with the clerk of such city or village within ten (10) days after such assessment or re-assessment roll shall have been approved and confirmed by the council or trustees, and said notice shall describe the property and the objections of such appellant to such assessment, and such appellant shall also file with the clerk of the district court aforesaid within twenty (20) days from the approval and confirmation of such roll by the council or trustees, a copy of said notice, appeal, assessment or re-assessment roll and proceedings thereon, certified by the clerk of such city or village, together with a bond to such city or village, conditioned to pay all costs that may be awarded against the appellant in such sum not less than two hundred (\$200) dollars and with such security as shall be approved by the judge of said court, and the case shall be docketed by the clerk of such court in the name of the person taking the appeal, against said city or village, as "an appeal from assessments." Said cause shall then be at issue and shall have precedence over all civil cases pending in said court, except proceedings under the act relating to eminent domain by cities and towns, actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes, except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment in so far as the same affects the property of the appellant from which judgment an appeal shall lie to the supreme court, as in other causes. In case the assessment is confirmed, the fees of clerk of the city or village for copies of the record shall be taxed against appellant with other costs.

10. All such assessments shall be known as "special assessments for improvements," and shall be levied and collected as a separate tax in addition to the taxes for general revenue purposes to be placed on the tax roll for collection, subject to the same penalties and collected in the same manner as other city or village taxes.

11. Whenever the mayor and council, or trustees, of any city or village shall, under authority vested in them by any law of this state and the charter of such city or village, cause any street, avenue or alley in such city to be graded, curbed, graveled, paved, repaired or macadamized, or any other local improvements, the expense of which is chargeable to the abutting, adjoining, contiguous or approximate

property, they may, in their discretion, provide for the payment of the costs and expenses thereof by installments, instead of levying the entire tax or special assessment for such costs at one time, and for such installments they may issue, in the name of such city or village, improvement bonds of the district, which shall include the adjoining, contiguous and approximate property liable to assessment for such local improvement according to the city or village charter, payable in installments of equal amounts each year; none of which bonds nor any of the installments shall run longer than five years, nor bear interest exceeding eight per centum per annum.

Such bonds may be issued to the contractor constructing the improvement in payment thereof, or the mayor and council, or trustees, by charter and ordinance of said city or village, or other authorized officer or officers of said city or village, may sell the same at not less than their par value, net, and pay the proceeds thereof to the contractor. Such bonds shall not be issued in amount in excess of the contract price of the work or improvement, except that the installment coupons shall include the interest on such installments to the maturity thereof. The bonds shall be of such denominations as the mayor and council, or trustees, shall deem proper. When district bonds are issued under this chapter for improvements, the cost of which is by law charged by special assessment against specific property, the mayor and council, or trustees, or other authorized officer, board or body shall levy special assessments each year sufficient to redeem the installments of such bonds next thereafter maturing, but in computing the amount of special assessment to be levied against each piece of property liable therefor, interest thereon at a rate not exceeding eight per centum per annum from the date of the issuance of said bonds until the maturity of the installments of bonds next thereafter maturing. Such assessments shall be made upon the property chargeable for the cost of such improvements, respectively, and shall be levied and collected in the same manner as may be provided by law, and the charter and ordinance of such city for the levy and collection of special assessments for such improvements where no bonds are issued, except as otherwise provided by this chapter. But the basis of such assessment, whether upon assessed valuation, frontage or otherwise liable for such costs, shall be retained for the assessment of succeeding installments of said bonds. The owner of any piece of property liable for any special assessment may redeem his property from such liability by paying the entire assessment chargeable against his property (upon the city clerk mailing him a written or printed notice) thirty days before the issuance of the bonds or after the issuance of the bonds by paying all the installments of the assessments which have been levied and also the amount of unlevied installments with interest on the latter at the rate of eight per centum per annum from the date of the issuance of the rate bonds to the time of maturity of the last installment. In all cases where installments of the assessments not yet levied and paid as above provided, whether before or after the issuance of the bonds, the same shall be paid to the city

treasurer, who shall receipt therefor, and all sums so paid shall be applied solely to the payment of such improvements or the redemption of the bonds issued therefor.

When any piece of property has been redeemed from liability for the cost of any improvement as herein provided, such property shall not thereafter be liable for further special assessments for the cost of such improvement, except as hereinafter provided. No suit to set aside the said special assessment or to enjoin the making of the same shall be brought, nor any defence to the validity thereof be allowed after the expiration of thirty days from the time the amount due on each lot or piece of ground liable for such assessment is ascertained and confirmed by the council or trustees. The funds raised by such assessments shall be applied solely towards the redemption of said bonds.

12. Such bonds, when issued to the contractor constructing the improvement in payment thereof, or when sold as above provided, shall transfer to the contractor or other owner or holder all the right and interest of such city or village in and with respect to every such assessment, and the lien thereby created against the property of such owners assessed as shall not have availed themselves of the provisions of this chapter in regard to the redemption of their property as aforesaid, shall authorize said contractor and his assigns and the owners and holders of said bonds to receive, sue for and collect or have collected every such assessment embraced in any such bond by or through any of the methods provided by law for the collection of assessments for local improvements. And if the city shall fail, neglect or refuse to pay said bonds, or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to collect such assessment and foreclose the lien thereof in any court of competent jurisdiction, and shall recover, in addition to the amount of such bonds and interest thereon, five per centum, together with the costs of such suit. Any number of holders of such bonds for any single improvement may join as plaintiff, and any number of owners of the property on which the same are a lien may be joined as defendants in such suit. And such bonds shall be equal liens upon the property for the assessments represented by such bonds without priority of one over another to the extent of the several assessments against the several lots and parcels of land.

13. In all cases of special assessments for local improvements of any kind against any property, persons or corporations whatsoever, wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality or irregularity or non-conformance with the charter provisions of laws governing such assessments, the city council or trustees or other authorized board or body shall be and they are hereby authorized to re-assess such special taxes or assessments and to enforce their collection in accordance with the provisions of law existing at the time the re-assessment is made; and it is further provided, that whenever, for any cause, mis-

take or inadvertence the amount assessed shall not be sufficient to pay the cost of the improvement made and enjoyed by owners of property in the local assessment district where the same is made, that it shall be lawful and the city council or trustees, or other authorized board or body, is hereby directed and authorized to make re-assessments on all the property in said local assessment district sufficient to pay for such improvement, such re-assessment to be made and collected in accordance with the provisions of the law or ordinance existing at the time of its levy.

14. Nothing shall be construed as repealing or modifying any existing manner and method for cities of the first class, or those organized under special or local laws, to make improvements as herein provided for, but shall be construed as an additional and concurrent power and authority. Any city whose charter provides for the issuance of bonds for local improvements payable only from the proceeds of special assessments, is hereby authorized to issue such bonds in the manner and with the effect provided in this section, and the holder of any such bond shall look only to the fund provided by such assessment for the principal or interest of such bond.

15. The holder of any bond issued under the authority of this chapter shall have no claim therefor against the city or village by which the same is issued, in any event, except from collections of the special assessment made for the improvement for which said bond was issued, but his remedy in case of non-payment, shall be confined to the enforcement of such assessments. A copy of this subdivision shall be plainly written, printed, or engraved on the face of each bond so issued.

Seventh. Raise revenue by levying and collecting a license tax on any occupation or business within the limits of the city or village, and to regulate the same by ordinance. All such taxes shall be uniform in respect to the classes upon which they are imposed: *Provided, however,* That all scientific and literary lectures and entertainments shall be exempt from such taxation.

Eighth. License, regulate and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license: *Provided,* That the city council or board of trustees may grant permits to druggists for the sale of liquors for medicinal, mechanical, sacramental and chemical purposes only, subject to forfeiture and under such restrictions and regulations as may be provided by ordinance: *Provided, further,* That in granting licenses such corporate authority shall comply with whatever general laws of the state may be in force relative to the granting of licenses.

Ninth. Impose a license tax not less than three nor more than ten dollars upon the owners and harborers of dogs, and enforce the same by appropriate penalties, and to authorize the destruction of any dog, the owner or harborer of which shall neglect or refuse to pay

such license tax: *Provided*, That no such license shall authorize the keeping, owning or harboring of more than one dog.

Tenth. Appoint judges and clerks of all elections, and prescribing the manner of conducting the same, and the return thereof, and of holding special elections for any purpose provided by law.

Eleventh. Make all such ordinances, by-laws, rules, regulations, resolutions, not inconsistent with the laws of the state, as may be expedient, in addition to the special powers in this charter granted, maintaining the peace, good government and welfare of the corporation and its trade, commerce, manufacturers, and to enforce all ordinances by inflicting fines or penalties for the breach thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, and in default of payment, to provide for confinement in prison or jail, and at hard labor upon the streets or elsewhere for the benefit of the city or village.

Twelfth. Regulate and prescribe powers and duties and compensation of officers not herein provided for, and to require of all officers and servants elected or approved bonds and security for the faithful performance of their duties.

Thirteenth. Make contracts with, and authorize any person, company or association, to erect gas-works and give such persons, companies or associations the exclusive privilege for furnishing gas to light the streets, lanes and alleys, for any length of time not exceeding five years.

Fourteenth. Establish, alter and change the channels of water courses, and to wall them and cover them over, to establish, make and regulate public wells, cisterns, windmills, aqueducts and reservoirs of water and to provide for the filling of the same.

Fifteenth. Regulate the running at large of cattle, hogs, horses, mules, sheep, goats, dogs and other animals, and to cause such as may be running at large to be impounded and sold to discharge the costs and penalties provided for the violation of such prohibition, and the expense of impounding and keeping the same and of such sale.

Sixteenth. Provide for the erection of all needful pens and pounds, within or without the city limits, and to appoint and compensate keepers thereof, and to establish and enforce rules governing the same.

Seventeenth. Regulate the construction of and order the suppression and cleaning of fire places, chimneys, stoves, stove pipes, ovens, boilers, kettles, forges, or any apparatus used in any building manufactory or business, which may be dangerous in causing or promoting fires, and to prescribe limits in which no dangerous or obnoxious and offensive business may be carried on.

Eighteenth. Prescribe and alter the limits within which no building shall be constructed except of brick, stone or other incombustible material, with fire proof roof, and after such limits are established no special permit shall be given for the erection of buildings of combustible material within said limits.

Nineteenth. Regulate levees, depots, depot grounds, and places for storing freights and goods, and to provide for and regulate the

passage of railways through streets and public grounds of the city or village.

Twentieth. Regulate the crossings of railway tracks, and to provide precautions and prescribe rules regulating the same; and to regulate the running of railway engines, car or trucks within the limits of said city or village, and prescribe rules relating thereto, and to govern the speed thereof, and to make any other and further provisions, rules, and restrictions to prevent accidents at crossings, and on the tracks of railways, and to prevent fires from engines.

Twenty-first. Establish standard weights and measures, and regulate the weights and measures to be used in the city or village, and to regulate the weighing and measuring of every commodity sold in the city or village, in all cases not otherwise provided by law.

Twenty-second. Provide for the inspection of hay, grain and coal, the measuring of wood and fuel to be used in the city or village and to determine the place or places of the same and to regulate and prescribe the place or places of exposing for sale hay, coal and wood, to fix the fees and duties of persons authorized to perform the duties named in this subdivision.

Twenty-third. Remove all obstructions from the sidewalks, curbstones, gutters, and cross-walks at the expense of the person placing them there, or of the city or village, and to require and regulate the planting and protection of shade trees in the streets, the building of bulkheads, cellar and basement ways, stairways, railways, window and doorways, awnings, hitching posts and rails, lamp posts, awning posts, and all other structures projecting upon or over and adjoining, all other excavations through or under the sidewalks in said city or village.

Twenty-fourth. Prevent and restrain riots, routs, noises, disturbances, or disorderly assemblies; to regulate, punish and prevent the discharge of firearms, rockets, powder, fireworks, or any other dangerous combustible material in the streets, lots, grounds, alleys, or about or in the vicinity of any building; to regulate, prevent and punish the carrying of concealed weapons; to arrest, regulate, punish, fine or set at work on the streets or elsewhere all vagrants and persons found without visible means of support or some legitimate business.

Twenty-fifth. Prevent and remove all encroachments upon and into all sidewalks, streets, avenues, alleys or other city or village property, and to punish and prevent all horse racing, fast driving or riding in the streets, highways, alleys, bridges, or places in the city or village, and all games, practices or amusements therein likely to result in damage to any person or property; to regulate, prevent and punish the riding, driving and passing of horses, mules, oxen, cattle or other teams, or any vehicle drawn thereby over, upon or across, sidewalks or along any street of the city or village.

Twenty-sixth. Open, widen, or otherwise improve or vacate any street, avenue, alley or lane, in the limits of the city or village; and also to create, open and improve any new street, avenue, alley, or lane: *Provided*, That all damages, sustained by the citizens of the city or

village or of the owners of the property therein shall be ascertained in such manner as shall be provided by ordinance: *Provided, further,* That whenever any street, avenue, alley or lane, shall be vacated, the same shall revert to the owner of the adjacent real estate one-ha'f on each side thereof.

Twenty-seventh. Create, open, widen or extend any street, avenue, alley or lane, or annul, vacate, or discontinue the same whenever deemed expedient for the public good and to take private property for public use or for the purpose of giving right-of-way or other privilege to any railroad company or for the purpose of erecting or establishing market houses or market places, or for any other necessary public purpose: *Provided, however,* That in all cases the city or village shall make the person or persons whose property shall be taken or injured thereby adequate compensation therefor, to be determined by the assessment of five disinterested holders who shall be elected and compensated as may be prescribed by ordinance, and who shall, in the discharge of their duties, act under oath faithfully and impartially to make the assessment to be submitted.

Twenty-eighth. Borrow money on the credit of the city and pledge the credit, revenue and public property of the city for the payment thereof, when authorized in the manner hereinafter provided; and to evidence the same by the issuance of bonds, with proper interest coupons attached thereto.

Twenty-ninth. All ordinances shall be passed pursuant to such rules and regulations not inconsistent with the general laws relating thereto as the council or board of trustees may provide; and all such ordinances may be proved by the certificate of a clerk under the seal of the city or village, and, when printed or published in book or pamphlet form by authority of the city or village, shall be read and received in evidence in all courts and places without further proof.

Thirtieth. The council or trustees shall cause to be published semi-annually, a statement of the receipts of the corporation and sources thereof, and an itemized account of expenditures, with a statement of the financial condition of the city or village.

Thirty-first. Purchase, hold and pay for, in the manner herein provided, lands not exceeding eighty acres in one body outside of the corporate limits, for the purpose of the burial of the dead, and all necessary grounds, hospital grounds and water works.

Thirty-second. Survey, plat, map, grade, fence, ornament and otherwise improve all burial and cemetery grounds and avenues leading thereto, owned by said city or village; to construct walks and protect ornamental trees therein and provide for paying the expenses thereof.

Thirty-third. Convey cemetery lots by certificates signed by the mayor or chairman and countersigned by the clerk, under the seal of the city or village, specifying that the person to whom the same is issued is the owner of the lot or lots described therein by number, as laid down on such map or plat, for the purpose of interment, and such certificate shall vest in the proprietor, his or her heirs or assigns, a

right in fee simple to such lots for the sole purpose of interment, under the regulations of the city council, or board of trustees, and such certificate shall be entitled to be recorded in the office of the county recorder of the proper county without further acknowledgement, and such description of lots shall be deemed and recognized as a sufficient description thereof.

Thirty-fourth. Limit the number of cemetery lots which shall be owned by the same person at the same time; to prescribe rules for enclosing, adorning and directing monuments and tomb stones on cemetery lots; to prohibit any diversion of the use of such lots, and any improper adornment thereof; but no religious test shall be made as to the ownership of the lots, the burial therein, or the ornamentation of graves or of such lots.

Thirty-fifth. Pass rules and ordinances imposing penalties and fines not exceeding one hundred dollars, regulating, protecting and governing the cemetery, the owners of lots therein, visitors thereof and trespassers therein, and the officers of such city or village shall have as full jurisdiction and power in the enforcing of such rules as though they related to the corporation itself.

Thirty-sixth. Acquire, by purchase or otherwise, water works, or plants, and to supply the municipality and the inhabitants thereof with water and light and to charge private persons and corporations for water and light, or either, but all such charges or rates shall be reasonable and shall be uniform and equal to all alike and based upon the service supplied, proportionately, without discrimination in favor of, or against any person or persons whomsoever.

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A grant of power carries with it authority to do those things necessary to the exercise of the power granted.—*Willson et al. v. Boise City* (Idaho), 55 Pac. 887.

ULTRA VIRES ORDINANCES: A municipal corporation is bound by the acts of its officers only when within the charter or scope of their powers. Acts outside of the powers of the corporation or of the officers appointed to act for it, are void as respects the corporation and such corporation is not liable therefor.—*Wallace v. The Town of Norman* (Okla.), 60 Pac. 108.

MUNICIPAL LIABILITY: As to the liability of municipal corporations, Dillon groups decisions as follows, in 2 Dil. Mun. Corp. Sec. 999: (1) When neither cities or counties or other quasi corporations are held to an implied civil liability: only a few states have adopted this extreme view of exempting liability in this respect. (2) When the reverse is held and both chartered cities and counties are alike construed to be impliedly liable for their neglect of the duty in question, this doctrine prevails in a small number of states. (3) When municipal corporations proper, such as chartered cities, are held to an implied

civil liability for damages caused to travelers for defective or unpaved streets under their control, but denying that such liabilities attach to counties or other quasi corporations as respects highways and bridges under their charge: this distinction has received judicial sanction in a large majority of the cities where legislation is silent in respect to corporate liability. (This note cited with approval in the case of *Davis v. Ada County* (Idaho), 47 Pac. 93.

In the case of *Giffen v. Lewiston* (Idaho), 55 Pac. 545, the alleged liability of the city was based upon the provision in the city charter imposing such liability.

ORDINANCES GOVERNED BY STATUTE: Sec. 2, Art. XII, of the Idaho constitution prohibits municipal ordinances in conflict with the general laws of the state. The charter of Boise City and amendments thereto, authorize only such ordinances as are in harmony with such general laws. In *re Ridenbaugh* (Idaho), 49 Pac. 121 and in California it is held that an ordinance which punishes precisely the same acts as are punishable under a section of the Penal Code, is in conflict with the general law and there-

fore void.—In re Sic, 73 Cal. 142, 14 Pac. 405. But see *State v. Preston* (Idaho), 38 Pac. 694.

CITY TAXATION: Personal property of a national bank held not taxable by a city under Rev. St. U. S. Sec. 5219.—*National Bank of Arizona v. Lacy* (Ariz.), 57 Pac. 693.

ASSESSMENT, BASIS OF LEVY: The municipal authorities of a corporate city may make a legal assessment in electing to take an assessment made by the county and city assessing authorities as a basis for the levy of municipal taxes on property within such city, and the levy of lawful taxes thereon by such city for municipal purposes according to the provisions of its charter and ordinances, constitutes a legal levy.—*Lockey v. Walker*, 12 Mont. 577, 31 Pac. 639.

RIGHT OF TAXPAYERS: Any taxpayer, on behalf of himself and others, has a right to institute proceedings in a court of equity to prevent the misapplication of funds by municipal officers on the ground that the threatened illegal corporate act will increase the burden of taxation and thus burden the plaintiff. — *Davenport v. Kleinschmidt*, 6 Mont. 502, 13 Pac. 249.

NECESSARY EXPENSES: Water and light are not in themselves such necessary expenses to a town within the meaning of the constitution of North Carolina (constitution Idaho, Art. VIII, Sec. 3), that an unusual levy of tax may be made, or a debt incurred without proper legislative authority and the approval of the public vote.—*Thrift v. Elizabeth City*, 122 N. C. 31, 44 L. R. A. 427, 30 S. E. 349.

BRIDGES: A city having extended its limits and built its streets across a ditch, the owner thereof must bridge the same at his own expense wherever such ditch obstructs either the passage or use of the streets; if he fails to do so, the ditch becomes a public nuisance and may be bridged by the city at the expense of the owner.—*Boise City v. Boise Rapid Transit Co.* (Idaho), 59 Pac. 716.

SEWERS: The waiver of strict performance of a sewer contract according to specifications is within the power of the common council of a city.—*Weston v. Syracuse*, 158 N. Y. 274, 43 L. R. A. 678, 53 N. E. 12. The fact that a sewer blows up is entitled to consideration upon the question of care on the part of the municipality in respect to its management.—*Fuchs v. St. Louis*, 133 Mo. 168, 34 L. R. A. 118, 31 S. W. 115, 34 S. W. 508.

SPECIAL ASSESSMENT FOR IMPROVEMENTS: A statute authorizing the laying out of streets and pay-

ment of costs by special assessment on lands benefited, is constitutional.—*Cohen v. City of Alameda* (Cal.), 57 Pac. 377. As to petition of property owners, see note under Sec. 1858.

PAYMENT OF TAXES: The damage to his property imposed by a public improvement, and for which no payment has been made, cannot be used as a set-off or counter-claim by a defendant in an action to enforce an assessment based on the contract under which the work which damaged his property was performed.—*Hornung v. McCarthy* (Cal.), 58 Pac. 303.

DISPOSITION OF TAXES: A city indebtedness incurred during one fiscal year cannot be paid from the income or revenue of a future fiscal year, unless the fund is especially provided for that purpose and collected therefor in such future year.—*Theiss v. Hunter* (Idaho), 45 Pac. 2.

LEVY AND COLLECTION: Under the provisions of Sec. 1930, it is made the duty of the county tax collector to collect all taxes levied by the council or trustees of a city or village, and under the provisions of this section, he must pay over all money thus collected to the city or village treasurer on demand, and neither the county nor the tax collector is authorized to retain any part of the money so collected as compensation for collecting the same.—*City of Moscow v. Latah County* (Idaho), 46 Pac. 874. The provisions of this section relating to revenue which give to towns and villages the right to levy and collect taxes for general revenue purposes, are not in conflict with the provisions of the section giving county commissioners the exclusive right to levy property and road tax, but when construed together mean that the town or village trustees cannot levy property road tax.—*City of Genesee v. Latah County* (Idaho), 36 Pac. 700.

NOTICE OF ASSESSMENT: Since due publication of the notice and resolutions of a city council in respect to street improvement is sufficient to give jurisdiction to make the assessment upon property for the cost thereof under the statute, the failure to let such publishing go to the lowest bidder, as required by said statute, cannot be inquired into in an action for the collection of such assessment.—*Moffit v. Jordan* (Cal.), 60 Pac. 173.

HEARING OF TAXPAYER: A property owner has no constitutional right to be heard on the validity of an assessment in an action therefor by the city, where he had notice under the original assessment.—*Nottage v. City of Portland* (Ore.), 58 Pac. 883.

LICENSE TAXES: The imposition on laundrymen of the payment of a license fee of \$15 for a steam laundry, \$10 for every male person in the business other than that of a steam laundry, and \$25 for a male laundryman employing one or more other persons, does not grant a monopoly or have a prohibitory effect.—*State ex rel. Toi v. French*, 17 Mont. 54, 30 L. R. A. 427, 41 Pac. 1078, and cases cited for further discussion on the subject. A city ordinance requiring several classes of professional men to pay a license tax is not unconstitutional in that such tax is not required of all classes of professional men, where the tax bears equally upon all persons of the class named.—*City of Bozeman v. Caldwell*, 14 Mont. 480, 36 Pac. 1042.

The imposition of a discriminating and prohibitory tax on merchants using trading stamps by a city authorized to license, for the purpose of regulation and revenue, all kinds of business, lawful games, etc., cannot be justified on the ground that such tax is levied on a lottery since a lottery, being unlawful, cannot be licensed.—*Ex parte McKenna* (Cal.), 58 Pac. 916.

An ordinance which confers arbitrary power on a board to give or withhold consent to engage in a lawful business and make all engaged in that business practically beneficiaries at will as to their means of living under the board, is a violation of the constitutional rights to the equal protection of the laws, and an ordinance may be condemned as a denial of equal justice, though fair on its face and impartial in appearance if it is applied and administered by police authority with an evil eye and an unequal hand so as to particularly make unjust and illegal discrimination between persons in similar circumstances material to their rights.—*Yick Wo v. Hopkins* (Cal.), 118 U. S. 356, 14 L. R. A. 584.

LIQUOR LICENSES: Delegation of power to license: The power conferred by statute upon the mayor and council cannot be delegated by a council to another body or person, though the council may direct an authorized agent to issue a license when they have described the person entitled to the privilege and defined the terms.—*Note under St. Louis v. Russell*, 20 L. R. A. 721. A city ordinance providing that an application for a license must be endorsed by five persons, and that the mayor, president of the city council and chief of police shall pass upon the applicant's moral character, does not delegate power as the condition relates only to the mode of applying for the license.—*In re Bickerstaff*, 70 Cal.

35. So, a statute requiring a petition of a majority of legal voters resident in a city before the granting of a license, is invalid.—*House v. State*, 41 Miss. 737; see also *Groesch v. State*, 42 Ind. 547; *Jones v. Hilliard*, 69 Ala. 300, but it is authorized where officers or agents are given an arbitrary power or discretion in the granting or withholding of licenses.—*In re Christensen*, 43 Fed. Rep. 243.

CONSTRUCTION OF LIQUOR STATUTES: Alcohol has been held to be neither ardent nor vinous spirits nor liquor of any kind within the meaning of a statute restricting the sale of such liquors.—*State v. Martin*, 34 Ark. 340, notwithstanding the sale of alcohol has been held a violation of a law prohibiting the sale of ardent and vinous spirits, where such sale was a mere subterfuge for evading the law.—*Winn v. The State*, 43 Ark. 151. A license to sell "wine, beer, ale, cider, and other fermented liquors," held not to extend to the sale of distilled liquors.—*Com. v. Markoe*, 17 Pick. 465. Cider held not to be included in a restriction against the sale of "spirituous, vinous and malt liquors."—*Feldman v. Morrison*, 1 Ill. App. 460, but fermented cider is "fermented liquor."—*The People v. Foster*, 64 Mich. 715, 31 N. W. 596. Lager beer held not to be a vinous liquor.—*Alder v. The State*, 55 Ala. 16.

MIXED DRINKS: The proportion of whiskey or ardent spirits to other ingredients is to be mainly considered in determining the character of a compound under a statute restricting the sale of ardent, vinous, malt, or fermented liquors, or any compound thereof.—*Foster v. The State*, 36 Ark. 258.

CONSTITUTIONALITY OF LIQUOR ORDINANCES: The right to pursue a lawful employment is one of the privileges and immunities granted to the citizens by the constitution of the United States, but such right is not abridged within the meaning of the fourteenth amendment to the constitution by municipal ordinances which merely regulate the sale of liquors and impose a license thereon without prohibiting the sale.—*In re Bickerstaff*, 70 Cal. 35, 11 Pac. 393.

DOG LICENSES: A city requiring a dog to wear a collar and tag, and making it unlawful for any dog to run at large without them, with authority to any person to kill the same, does not authorize any one but an officer to kill a dog.—*Lowell v. Gathright*, 97 Ind. 313. Moreover, authority to kill an unlicensed dog wherever found does not authorize a person to pursue a dog into the dwelling of the owner for the pur-

pose of taking it away, even after refusal to give it up.—*Kerr v. Seaver*, 11 Allen, 151. Similarly, in respect to a like statute concerning dogs "going at large."—*Bishop v. Fahay*, 15 Graves, 61, but an officer may lawfully enter upon the premises of the owner.—*Blair v. Forehand*, 100 Mass. 136, 97 Am. Dec. 82. The fact that a dog is under the immediate care of its owner will not save it.—*Tower v. Tower*, 18 Pick. 262.

CONTRACTS FOR GAS: This power cannot be delegated to a committee which shall have official determination of the matter.—*Minneapolis Gas Light Co. v. Minneapolis*, 36 Minn. 159, 30 N. W. 450. Similarly, *Anderson v. Equitable Gas Light Co.* 12 Dailey, 426, but a city ordinance granting to a gas company the right to furnish gas for a time extending beyond the expiration of the company's charter and authorizing such company to transfer its rights to any organized gas company that would give bonds to perform the agreements, is not void.—*State v. Laclede Gas Co.* 102 Mo. 472, 14 S. W. 974, 15 S. W. 383.

ANIMALS "RUNNING AT LARGE:" A dog is going at large when loose and following the person in charge of him through the streets of a town at such a distance that he cannot exercise control over the dog, which will prevent his doing mischief.—*Com. v. Dow*, 10 Met. 382. A ferocious and dangerous dog is at large, though in the presence of his master, if he is so far from restraint as to be liable to do mischief to man or beast.—*Brown v. Carpenter*, 26 Vt. 638, 62 Am. Dec. 603. A cow, running at large, set upon and gored plaintiff. Held, that the city could not be held liable for injuries resulting from its neglect to exercise its governmental powers.—*Rivers v. Augusta*, 65 Ga. 376, 38 Am. Rep. 787.

EXPLOSIVES: A city has power to prohibit keeping or storing in large quantities, inflammable or explosive oils within its corporate limits without its permission, under legislative act giving it power to pass ordinances necessary to carry out the objects of the corporation.—*City of Richmond v. Dudley (Ind.)*, 14 L. R. A. 187, 28 N. E. 312.

FIRE LIMITS: An ordinance establishing fire limits in the city of San Francisco is valid.—*McClaskey v. Creeling*, 76 Cal. 511, 18 Pac. 433. An ordinance of the county and city of San Francisco prohibiting the repair of any wooden buildings within certain fire limits without permission in writing signed by a majority of the fire wardens and approved by a majority of the fire department and the mayor, is not in

violation of the fourteenth amendment of the constitution of the United States.—*Ex parte Fisk*, 72 Cal. 125, 13 Pac. 319. An ordinance establishing fire limits within which wooden buildings cannot be erected is authorized by a city charter giving the city power to make regulations for the prevention of fire, providing such means are proper and necessary to the accomplishment of the end in view, and where the city is given power to make regulations for the prevention of fire and the propriety or necessity of the methods to be pursued to accomplish that object is left to the discretion of the council, the court will not be warranted in setting aside as improper an ordinance adopting means which the council has, by its acts, declared proper.—*Olympia v. Mann (Wash.)*, 12 L. R. A. 150, 25 Pac. 337. A reservation by a city council to itself in an ordinance establishing fire limits within which the erection of wooden buildings is prohibited, of the right to grant special permits for the erection of such buildings within such limits, does not make the ordinance so unreasonable as to render it void.—*Id.*, and citations under notes in same case. In the exercise of such power the board of supervisors may prohibit any person from establishing, maintaining, or carrying on a laundry within the corporate limits of the city and county without first having obtained the consent of the board unless the same be located in a building constructed either of brick or stone.—*In re Yick Wo*, 68 Cal. 294, 2 Pac. 139.

PUBLIC GROUND: A municipal corporation has no proprietary rights in streets; levees, or other public grounds within its territorial limits, but whatever rights it has in these are merely held in trust for the people.—*St. Paul v. C. M. & St. P. R. Co.* 63 Minn. 330, 34 L. R. A. 184, 63 N. W. 267, 65 N. W. 649, 68 N. W. 458.

As to the right of railroads to lay tracks in streets, see Sec. 1144, and notes. In all suits by municipalities to restrain a nuisance by the railroad company in the use of the streets where there is a granting of authority, the grant is construed most liberally in favor of the public and most rigidly against the company.—*Moundville v. Ohio River Ry. Co.* 37 W. Va. 92, 16 S. E. 514.

RAILWAY CROSSINGS: An agreement by a city council not to prosecute a railroad company for future violations of an ordinance requiring the company to keep a flagman at certain crossings, is not binding on a future council.—*Marshall v. C. C. C. & St. L. R. Co.* 80 Ill. App. 531.

ARTIFICIAL WATERWAYS: One who purchases land and improves the same, on the line of an artificial waterway constructed by a municipal corporation, may well rely upon such municipal corporation to perform the duty that it is under of keeping such artificial waterway in repair and condition to carry all the waters that may flow therein from usual and ordinary causes, and may recover damages received by the negligent flooding of his lands by waters from such artificial waterway.—*Willson et al. v. Boise City (Idaho)*, 55 Pac. 887.

REGULATIONS ON USE OF STREETS: An ordinance making it a misdemeanor to drive a horse in a street faster than an ordinary traveling gait, held not to apply to the fire department.—*City of Kansas City v. McDonald (Kan. Sup.)*, 57 Pac. 123. The conversion of a public highway into a pleasure driveway, over which loaded vehicles are excluded, does not deprive citizens, desiring to transfer loads over it, of their property without due process of law, nor take their private property for public use without compensation. The limitations of the use of a street in such manner is in no sense class legislation, and the power so to change the use by general laws is impliedly a constitutional prohibition of the vacation of streets by local or special laws, but where the enforcement of such an ordinance is made to depend upon the discretion of the village trustees by requiring their permission for such use, it is unreasonable and void. Moreover, a special injury is suffered by a lumber company, which has no other available avenue of delivering its material to the purchasers, by the enforcement of an ordinance prohibiting the use of a street for traffic wagons and such company may enjoin its enforcement.—*Cicero Lumber Co. v. Cicero*, 176 Ill. 9, 51 N. E. 758, 42 L. R. A. 696, and citations thereunder.

CONDEMNATION OF LAND: A petition by the city of Los Angeles for the condemnation of certain land for a street, recited that the city council duly passed and adopted an ordinance "directing proceedings to be taken to condemn certain land for public use agreeably to the provisions of said ordinance." Held, that this was sufficient allegation of the necessity of taking the land for public use. The averment that the ordinance "was duly passed and adopted" is a sufficient statement that everything necessary to be done by the city council to give it

validity had been done, without stating each particular thing or act.—*Los Angeles v. Waldron*, 65 Cal. 283, 3 Pac. 890. Damages to property imposed by a public improvement, and for which no payment has been made, cannot be used as a set-off or counter-claim by the defendant in an action to enforce an assessment based on the contract under which the work which damaged his property was performed.—*Horung v. McCarthy (Cal.)*, 58 Pac. 303.

Where an owner of land adjacent to a public highway plats it into lots and blocks, and the authorities of a city to which it is adjacent, extend the corporate limits around the land so platted, including one-half of the highway, the fee of which was in the owner of the platted tract, the half of the highway so taken into the city became a street thereof, and the city is bound to keep in repair a bridge theretofore built by the township wholly on the half of the road taken into the city.—*Nand v. City of Newton*, 58 Kan. 229, 48 Pac. 852.

ALLEYS: The right of an abutting owner who has bought with reference to a dedicated public alley to have it kept open, includes the enjoyment of light and air from the space above, extending unobstructed to the sky, and the city authorities cannot grant the right to build a bridge or overhead crossing over such an alley, though the city owns the fee.—*Field v. Barling*, 149 Ill. 556, 24 L. R. A. 406, 37 N. E. 850.

IMPROVEMENT OF STREET: A city is not liable for damages caused by the obstruction of the flow of surface waters from the land abutting on a street occasioned by the necessary and lawful grading of the street.—*Lampe v. City and County of San Francisco (Cal.)*, 57 Pac. 461.

VACATION OF STREETS: The exercise of authority conferred by the statute upon the board of supervisors, to vacate streets is a legislative and not a judicial function; hence, certiorari will not lie.—*Brown v. Board of Supervisors of the City and County of San Francisco (Cal.)*, 57 Pac. 82.

GENERAL WELFARE: The city council of Augusta has not under the "general welfare" clause, the power to pass an ordinance absolutely prohibiting drummers, runners, hackmen, cabmen, and all other persons from entering, with the owner's consent, the union passenger depot in such city "to solicit custom or patrons."—*Cosgrove v. City of Augusta (Ga.)*, 31 S. E. 445, 42 L. R. A. 711, and citations thereunder.

Section 1917. Suppression of Prostitution: City councils, boards of aldermen and boards of trustees of cities and towns and villages in this state theretofore incorporated under special or general laws, or hereafter incorporated, are hereby vested with authority and power to regulate or to suppress and prohibit prostitution within the limits of their respective cities, towns and villages; and are hereby authorized and empowered to pass such ordinances, by-laws, rules and regulations as may be necessary to effect such regulation, suppression or prohibition within their respective cities, towns and villages.

1899, 5th Ses. p. 295; 1897, 4th Ses. p. 18.

An ordinance in so far as it prohibits any person, for the purpose of prostitution, to visit houses of prostitution,

is within the power of the council to enact, and is not in conflict with the general laws of the state.—Ex parte Johnson, 73 Cal. 228, 15 Pac. 43.

STREETS, BRIDGES AND PUBLIC HIGHWAYS.

Section 1918. Control of Streets and Highways: The city council or board of trustees shall have the care, supervision, and control of all public highways, bridges, streets, alleys, public squares and commons within the city or village, and shall cause the same to be kept open and in repair and free from nuisances, but no street or alley which shall hereafter be dedicated to public use by the proprietor of ground in any city or village, shall be deemed a public street or alley or to be under the use or control of the city council or board of trustees unless the dedication shall be accepted and confirmed by an ordinance especially passed for such purpose.

1899, 5th Ses. p. 208, part of Sec. 81; 1893, 2d Ses. p. 120, Sec. 77.

STREETS, BRIDGES, ETC.: When a private person or corporation constructs a ditch or canal across a public highway, it gives them no right to destroy it as a thoroughfare, but they are bound, both by the common law and the statute, to restore or unite the highway at their own expense by some reasonably safe and convenient means of passage and keep the same in good repair. This obligation is the same whether the ditch or canal cuts the highway or street within or without the limits of a city or village.—City of Lewiston v. Booth (Idaho), 34 Pac. 809.

The provisions in a city charter that such city shall be liable to any one for any loss or injury to person or prop-

erty growing out of any casualty or accident happening to any such person or property on account of the condition of any street or public ground therein does not deprive the city of the ordinary defense of contributory negligence to an action against it for damages brought under such charter provision.—Giffen v. Lewiston (Idaho), 55 Pac. 545.

A sidewalk is included within the term "streets and public grounds," as is used in a city charter, which makes the city liable to any one for damages sustained by accident or casualty on account of the condition of "any street or public ground" within the city.—Giffen et ux. v. City of Lewiston (Idaho), 55 Pac. 545.

Section 1919. May Sell and Convey Streets, Etc.: The city or village shall have powers by ordinance to sell and convey all public squares within the city or village: *Provided*, A petition containing the signature of three-fourths of the property holders of said city or village be presented to the city council or board of trustees and that said petition be published not less than four weeks in a paper published in said city or village and that any person aggrieved by said sale shall state cause why said property should not be sold,

to the district court of said county wherein said city or village is situated, and if the said court shall decide that said party or parties have shown good and sufficient cause why said public property should not be so disposed of, then said public property shall not be sold. The proceeds of such property shall not be used for any other purpose except to pay any indebtedness against said city or village or for public improvement in said city or village.

1899, 5th Ses. p. 208, part of Sec. 81; 1893, 2d Ses. p. 120, Sec. 77.

Section 1920. Same: In all cases, where any street, highway, avenue, alley or lane in any incorporated city, town, or village, shall have been or shall hereafter be annulled, vacated, or discontinued, the mayor and common council of such city, or the board of trustees of such town or village, may, by ordinance, dispose of the part or portion of such street, highway, avenue, alley or lane so vacated, annulled, or discontinued, and may direct a conveyance thereof to be executed by the mayor of such city or the chairman of the board of trustees of such town or village to the person named in such ordinance; and such deed, when so executed and delivered, shall operate to convey a good and valid title in and to the said premises to the person named therein.

This section shall apply to all cities, towns, and villages, whether incorporated under special or general laws.

1901, 6th Ses. p. 14, Secs. 1 and 2.

Section 1921. County Bridges Within Corporate Limits: All public bridges exceeding sixty feet in length over any stream crossing a state or county highway shall be constructed and kept in repair by the county;

Provided, That when any city or village has constructed a bridge over sixty feet span on any county or state highway within their corporate limits and have incurred a debt for the same, then the treasurer of the county in which said bridge is located shall pay to the treasurer of said city or village, seventy-five per cent of all bridge taxes collected in said city or village until said debt is fully paid and interest upon the same;

Provided, further, That the council or trustees may appropriate in the manner hereinafter provided, a sum not exceeding five dollars per linear foot to aid in the construction of any county bridge within the limits of such city, or may appropriate a like sum to aid in the construction of any bridge contiguous to said city or village on a highway leading to the same, or any bridge across any unnavigable river which divides the county in which said city or village is located, from another state.

1899, 5th Ses. p. 208, Sec. 81; 1893, 2d Ses. p. 120, Sec. 77.

Section 1922. Establishing Markets on Streets: No charge or assessment of any kind shall be made or levied on any wagon or other vehicle or the horses thereto attached, or on the owner bringing produce or provisions to any of the markets in the city or village, or standing in or occupying a place in any of the

market spaces of the city or village or in the streets contiguous thereto, on market days and evenings previous thereto; but the city council or board of trustees shall have full power to prevent forestalling, to prohibit or regulate hucksterings in the markets, to prescribe the kind and description of articles which may be sold and the stands or places to be occupied by the venders, and may authorize the immediate seizure and arrest, or removal from the markets of any person violating its regulations as established by ordinance, together with any article of produce in their possession, and the immediate seizure and destruction of tainted or unsound meat or other provisions.

1899, 5th Ses. p. 209, Sec. 82; 1893, 2d Ses. p. 121, Sec. 78.

Section 1923. City or Village a Road District. Powers: Each incorporated city, town or village in this state constitutes a separate road district, and the city council of each city, and the board of trustees of each town or village, as far as relates to their city, town or village, have the powers conferred, and must preform the duties imposed upon the board of county commissioners of their respective counties. Each city council and board of trustees must appoint a road overseer, who must within such city, town or village, have the powers conferred, and perform the duties imposed by chapter XLVI of this Code upon road overseers; and each city council or board of trustees may remove the overseer, or may require a bond or settlement from him at any time, and must fill any vacancy in such office; and regulate the length, grade and size of bridges, causeways and culverts; may provide for the construction and maintenance of sewers, sidewalks and street crossings, and the grade and construction and maintenance of streets and alleys, and have all the powers as to streets and alleys conferred by their respective charters or acts of incorporation, and by chapter XLVI of this Code.

1899, 5th Ses. p. 270; 1895, 3d Ses. p. 132, amending laws of 1887 R. S. Sec. 887.

POWER OF CITY COUNCIL: This section organizes each incorporated city in the state into a separate road district, and authorizes the city council to elect a road supervisor who shall have all the power and perform all the duties of road supervisors appointed by the county commissioners. The section gives the council in cities the same power as county commissioners, and they may cause bridges, cause-

ways, etc., to be erected on streets whenever necessary and keep the same in good repair.—*City of Lewiston v. Booth* (Idaho), 34 Pac. 809. Incorporated towns and villages, as separate road districts are under the exclusive jurisdiction and control of the trustees thereof, and boards of county commissioners cannot authorize road overseers to build, repair, or in any way interfere with the highways of an incorporated town or village.—*City of Genesee v. Latah County* (Idaho), 36 Pac. 700.

REVENUE.

Section 1924. Fiscal Year: The fiscal year of each city or village shall commence on the first Tuesday of May.

1899, 5th Ses. p. 210, Sec. 89; 1893, 2d Ses. p. 124, Sec. 85.

Section 1925. Annual Appropriation Bill. Redemption Fund: The city council or board of trustees shall, within the first quarter of each fiscal year pass an ordinance to be termed the annual appropriation bill, in which such corporate authorities may appropriate such sum or sums of money as may be deemed nec-

essary to defray all necessary expenses and liabilities of such corporation not exceeding in the aggregate the amount of tax authorized to be levied during that year, and at the same time said city council or board of trustees, unless provision shall have been made as provided by law, for the funding refunding, purchase, redemption or exchange of the outstanding city or village warrant indebtedness, must whenever any city or village shall have warrants outstanding and unpaid for the payment of which there are no funds in the city or village treasury in addition to other taxes provided by law, if such warrants amount to a sum equal to five per cent. or more of the value of the taxable property of such city or village as shown by the last preceding assessment, levy and include in such annual appropriation bill, a special tax assessment of not to exceed ten mills on the dollar, as shown by such preceding assessment if such warrants amount to a sum equal to four per cent. and less than five per cent. of such taxable property, they must levy and include in such annual appropriation bill, a special tax or assessment of not to exceed eight mills on the dollar as shown by such preceding assessment; if such warrants amount to a sum equal to three per cent. and less than four per cent. of such taxable property, they must levy and include in such annual appropriation bill a special tax or assessment of not to exceed six mills on the dollar as shown by such preceding assessment; if such warrants amount to a sum equal to two per cent. and less than three per cent. of such taxable property, they must levy and include in such annual appropriation bill a special tax or assessment of not to exceed four mills on the dollar as shown by such preceding assessment; if such warrants amount to one per cent. and less than two per cent. of such taxable property, they must levy and include in such annual appropriation a special tax or assessment of not to exceed two mills on the dollar as shown by such preceding assessment; and if such warrants amount to less than one per cent. of such taxable property, then they must levy and include in such annual appropriation bill such special tax or assessment on the dollar as shown by such preceding assessment as shall be sufficient to pay such warrants. All moneys arising from such special tax or assessment shall be placed in a special fund for the redemption of such warrants which shall be paid exclusively out of said fund, which shall be known as the warrant redemption fund. All moneys in the city or village treasury at the end of each fiscal year, not needed for current expenses, and applicable thereto, shall be transferred to said warrant redemption fund. Such ordinance shall specify the object and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. No further appropriations shall be made at any other time within such fiscal year, unless the proposition to make each appropriation has been first sanctioned by a majority of the legal voters of such city or village, either by a petition signed by them, or at a general election duly called therefor, and all appropriations shall end with the fiscal year for which they were made.

1899, 5th Ses. p. 210, Sec. 90; 1895, 4th Ses. p. 50, amending laws of 1893, 2d Ses. p. 124, Sec. 86.

Section 1926. Estimate of Expense: Before such annual appropriation bill shall be passed, the council or trustees shall prepare an estimate of the probable amount of money necessary for all purposes to be raised in said city or village during the fiscal year for which the appropriation is to be made, including interest and principal due on the bonded debt and sinking fund, itemizing and classifying the different objects and branches of expenditures as near as may be with a statement of the entire revenue of the city or village for the previous fiscal year, and shall enter the same at length upon its minutes and cause the same to be published four weeks in some newspaper published or of general circulation in the city or village.

1899, 5th Ses. p. 211, Sec. 91; 1893, 2d Ses. p. 124, Sec. 87.

Section 1927. Restrictions Upon Expenditures: The mayor and council, or board of trustees, shall have no power to appropriate, issue or draw any order or warrant on the treasurer for money, unless the same has been appropriated or ordered by ordinance, or the claim, for the payment of which such order or warrant is issued, has been allowed according to the provisions of this title, and appropriations for the class or object out of which such claim is payable has been made as provided in section 1925. Neither the city council nor board of trustees, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year anything over and above the amount provided for in the annual appropriation bill for the year, except as herein otherwise specially provided; and no expenditures for an improvement, to be paid for out of the general fund of the corporation, shall exceed in any one year the amount provided for such an improvement in the annual appropriation bill, *Provided, however,* That nothing herein contained shall prevent the city council or board of trustees from ordering, by two-thirds vote, the repair or restoration of any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made. The city council or board of trustees may, by a like vote, order the mayor, chairman of the board of trustees and finance committee to borrow a sufficient sum to provide for the expense necessary to be incurred in making any repairs or restoration of improvements, the necessity of which has arisen as is last above mentioned, for a space of time not exceeding the close of the next fiscal year, which sum, and the interest, shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. Should any judgment be obtained against the corporation, the mayor or the board of trustees and finance committee under the sanction of the city council or board of trustees may borrow a sufficient amount to pay the same, for a space of time not exceeding the close of the next fiscal year, which sum and interest shall, in like manner be added to the amount authorized to be raised in the general tax levy of the next year and embraced therein.

1899, 5th Ses. p. 211, Sec. 92; 1893, 2d Ses. p. 124, Sec. 88.

Section 1928. Appropriation Necessary Before Expense Incurred: No contract shall be hereafter made by the city council or board of trustees, or any committee or member thereof; and no expense shall be incurred by any of the officers or departments of the corporation, whether the object of the expenditure shall have been ordered by the city council or board of trustees or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise expressly provided.

1899, 5th Ses. p. 212, Sec. 93; 1893, 2d Ses. p. 125, Sec. 89.

Section 1929. Special Assessments: All money received on special assessments shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and said money shall be used for no other purpose whatever, unless to reimburse such corporation for money expended for such improvement.

1899, 5th Ses. p. 212, Sec. 94; 1893, 2d Ses. p. 126, Sec. 90.

Section 1930. Collection of Taxes: The council or trustees of each city or village shall, at the time provided by law, cause to be certified to the county tax collector the percentage or number of mills on the dollar of tax levied for all city or village purposes by them on the taxable property within said corporation for the year then ensuing as shown by the assessment roll for said year, including all special assessments and taxes assessed as hereinbefore provided, and the said tax collector shall place the same on the proper tax lists to be collected in the manner provided by law for the collection of state and county taxes in the county where such city or village is situated, and in all sales for any delinquent taxes for municipal purposes, if there be other delinquent taxes from the same person which are a lien upon the same property, the sale shall be for all the delinquent taxes; and such sales and all sales made under and by virtue of this section or the provisions of law herein referred to shall be of the same validity, and, in all respects, be deemed and treated as though sales had been made for the delinquent state and county taxes exclusively. The amount which may be so certified, assessed and collected, shall not exceed ten mills on the dollar to defray its general and incidental expenses, together with any special assessment or special taxes, or amounts so assessed as taxes under the provisions of this title and such sum as may be authorized by law to be levied for the payment of outstanding bonds and debts.

1899, 5th Ses. p. 209, Sec. 86; 1897, 4th
Ses. p. 50, amending laws of 1893, 2d
Ses. p. 124, Sec. 86.

This section cited in *Theiss v. Hunter* (Idaho), 45 Pac. 2.

Section 1931. County Assessor to Assess and Collect Taxes for Cities, Etc.: The assessor shall assess all property in and collect the tax for all cities, towns and villages, in his county, incorporated under the provisions of the act of the third session of the legislature of the State of Idaho and all general laws of the Territory or State of Idaho, except the special taxes in cities; also for all inde-

pendent school districts in his county organized under general laws of the state and for all cities and independent school districts in his county, organized under special laws of, or charters granted by this state, when any such special law or charter has been so amended by the legislature of the State of Idaho, as to authorize such cities and independent school districts to collect revenue under the provisions of title VII, at the same time that assessment for state and county taxes are made by him; and he is authorized and empowered to do and perform all acts in relation to the assessment and collection of such taxes as is provided therein for the assessment and collection of such taxes for state and county purposes. He shall list the property in such cities, towns, villages and independent school district, and the valuation thereof so that the property in such cities, towns, villages and independent school district and the valuation thereof can be separately shown.

1901, 6th Ses. p. 237, Sec. 6.

Section 1932. General Revenue Laws Applicable:

All the general taxes of such cities, towns, villages and independent school districts, levied and assessed under the laws of this state, shall become due and delinquent at the time that state and county taxes so become; and such taxes shall attach to and become a lien on the real property assessed as do state and county taxes; all the provisions of title VII governing and in aid of assessment and collection of state and county taxes are hereby made applicable to the assessment and collection of taxes in such cities, towns, villages and independent school districts.

1901, 6th Ses. p. 238, Sec. 7.

Section 1933. Assessor to Furnish Bond to City, Etc.:

Every assessor shall furnish bond to each city, town, village or independent school district within his county authorized by law to collect revenue under the provisions of title VII, in such amount as shall be fixed by the board of county commissioners for the protection of such city, town, village or independent school district.

1901, 6th Ses. p. 238, Sec. 9.

Section 1934. Tax Collector to Pay Taxes to Treasurer of City or Village: The tax collector of the county shall pay over on demand, to the treasurer of any city or village, all money received by him from taxes levied belonging to such city or village, together with all money collected as a tax on dogs from the residents of such corporation, for the use of the general fund therein.

1899, 5th Ses. p. 210, Sec. 88; 1893, 2d Ses. p. 124, Sec. 84.

Section 1935. County to Receive Per Cent. for Collection: All such cities, towns, villages and independent school districts shall pay to the county in which said city, town, village and independent school district are situated one and one-half per cent. on the amount of such city and independent school district taxes collected, and such payment shall be in full for such services and compensation of all county officers in assessing, collecting, equalizing, and paying over said city and independent school district taxes.

1901, 6th Ses. p. 238, Sec. 8.

LIQUOR LICENSES.

Section 1936. Power to Grant License: It shall be competent and lawful for any incorporated city or town within the county where any bond is filed and license granted, to prohibit the person so licensed, as well as all others, from engaging in the business of selling intoxicating liquors within the corporate limits until he shall obtain from said city or town authorities, such license as may be authorized by law and required by the ordinances and regulations of said city or town: *Provided*, That no additional bond shall be required by said city or town, nor shall any license be granted by the authorities of such city or town to anyone who has not filed the required bond with the board of county commissioners and obtain from such board a license as herein provided: *And, Provided further*, That no license granted by such city or town shall run for a longer period than the license granted by such board of county commissioners; and the revocation of the county license granted by the board of county commissioners shall work a revocation of any license granted by such city or town.

1891, 1st Ses. p. 35, Sec. 7.

CITY, TOWN AND VILLAGE BONDS.

Section 1937. May Issue Bonds; Purposes Enumerated: That every city or town incorporated under the laws of the Territory of Idaho, or of the State of Idaho, shall have power and authority to issue municipal coupon bonds, not to exceed at any time in the aggregate fifteen per cent. of the real estate value of said city or town according to the assessment of the preceding year, for any or all of the following purposes:

First.—To provide for the construction and maintenance of necessary water works and supplying the same with water; and to provide lights for streets, public buildings and grounds.

Second.—To provide for the laying, constructing, equipment and maintenance of sewers and drains.

Third.—To provide for the grading, paving, construction and laying out of streets and alleys.

Fourth.—To provide for the funding, refunding, purchase and redemption of the outstanding indebtedness of such city or town.

Fifth.—To provide for the establishment and maintenance of hospitals, pest houses, and cemeteries, either within or without the corporate limits of such city or town.

Sixth.—To provide for the purchase, improvement, equipment and maintenance of lands for the use of public parks, either within or without the corporate limits of such city or town.

Seventh.—To provide for the purchase, erection, construction, and furnishing of public buildings and building sites for the use of such city or town.

Eighth.—To provide for the establishment, equipment and maintenance of a fire department, and for the purchase of suitable and neces-

sary apparatus and buildings and building sites for the use thereof, and for all other necessary public improvements.

1899, 5th Ses. p. 29, Sec. 1; 1893, 2d Ses. p. 34, Sec. 1, amending laws of 1891, 1st Ses. p. 53, Sec. 1.

DEBT LIMIT: A person dealing with a municipal corporation is required to take notice of the fact that it has no lawful power to become further indebted.—*La Porte v. Gamewell Fire Alarm Telegraph Co.* 146 Ind. 466, 35 L. R. A. 686, 45 N. E. 588. But a statutory limitation on municipal indebtedness may be changed by the legislature by providing for additional indebtedness for a specified purpose.—*Prince v. Crocker*, 166 Mass. 347, 32 L. R. A. 610, 44 N. E. 446. The amount of a sinking fund must be deducted from the total apparent debt of a city to ascertain if its actual debt exceeds the debt limit.—*Kelley v. Minneapolis*, 63 Minn. 125, 30 L. R. A. 281, 65 N. W. 115. Water and lights are not, in themselves, such necessary expenses of a town within the meaning of the North Carolina constitution (Constitution Idaho, Art. VIII, Sec. 3), that an un-

usual levy of tax may be made or a debt incurred without proper legislative authority and the approval of the public vote.—*Thrift v. Elizabeth City*, 122 N. C. 31, 44 L. R. A. 427, 30 S. E. 349.

MUNICIPAL BONDS: Every purchaser of a municipal bond is chargeable with notice of the statute under which the bond was issued. If the statute gives no power to make the bond, the municipality is not bound.—*United States v. Macon County*, 99 U. S. 582, but if power exists in the municipality, a bona fide holder is protected against the mere irregularity in the manner of its execution.—*Anthony v. Jasper County*, 101 U. S. 693. Bond holders of a corporation take their bonds with the knowledge that the continuance of the charter rights and other franchises of the corporation depends upon the faithful performance of its duties to the public.—*Palestine Water & P. Co. v. Palestine (Tex.)*, 40 L. R. A. 203, 44 S. W. 814.

Section 1938. Bond Ordinance. Election: Whenever the common council of such city or the trustees of such town or other legislative body of any such city or town, shall deem it advisable to issue the coupon bonds of such city or town for any of the purposes aforesaid, the mayor and common council of such city or the trustees of such town shall provide therefor by ordinance, which shall specify the purpose of issuing such proposed bonds; if it is to create a new debt, the object thereof must be stated, or, if it is to fund or refund any existing indebtedness, it must be described; and, when it consists of warrants or other securities, they must be described by giving their number, date and amount and the fund out of which the same, according to the terms thereof, are payable; and the ordinance shall declare the purpose and the total amount for which such bonds shall be issued and designate the provisions to be made to pay the interest on such bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of the issuance of the same, and shall also provide for the holding of an election of the qualified electors who are taxpayers of such city or town of which thirty days' notice, to be provided for in such ordinance, shall be given in a newspaper of such city or town designated in said ordinance. Such election shall be conducted as other city elections. The voting at such election must be by ballot, and the ballots used shall be substantially as follows: "In favor of issuing bonds to the amount of dollars for the purpose stated in ordinance No." and "against issuing bonds to the amount of dollars for the purpose stated in ordinance No."

If at such election, two-thirds of the qualified electors who are tax-

payers in such city or town, voting at such election, assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds for said purpose shall be issued in the manner hereinafter provided.

1899, 5th Ses. p. 30, Sec. 2; 1895, 3d Ses. p. 70, Sec. 1, amending laws of 1891, 1st Ses. p. 53, Sec. 2.

STATUTORY REQUIREMENTS, ELECTIONS: Where it is proposed to call an election for the purpose of submitting to the electors of any town or city the question of issuing bonds for the funding of an existing indebtedness of such town or city, and an ordinance providing therefor does not describe the indebtedness sought to be funded as prescribed by Section 2 of the act of February 2, 1899, all proceedings thereunder are invalid.—*Coffin v. Richards* (Idaho), 59 Pac. 562. Where a city ordinance provided for the levy of an annual tax for the payment of all interest to accrue on bonds, also for the levy of an annual tax after a certain year to constitute a sinking fund for the payment of the principal; held, to comply with Sec. 3, Art. 8 of the constitution.—*Boise City v. Union Bank and Trust Co.* (Idaho), 63 Pac. 107. Even bona fide purchasers of negotiable

bonds are charged with knowledge of all requirements of the statute under which such securities were issued.—*Peoples' Bank v. School Dist. No. 52*, 3 N. Dak. 496, 28 L. R. A. 642, 57 N. W. 787.

ELECTION NOTICE: The terms and conditions of municipal bonds which the statute requires to be stated in the notice of election, including those as to the rate of interest and the tax levy required for the payment thereof, must substantially follow those stated in such notice.—*Skinner v. Santa Rosa*, 107 Cal. 464, 29 L. R. A. 512, 40 Pac. 742. But the alternative of making interest payable annually or semi-annually, need not be submitted to the voters at an election respecting the issue of bonds, under a statute requiring a notice of an election, the purpose and character of the bonds and the rate of interest, without any notice as to the time of paying it.—*Murphy v. San Luis Obispo*, 119 Cal. 624, 39 L. R. A. 444, 51 Pac. 1085.

Section 1939. Bonds. Denomination, Interest, Payable Where: Said bonds shall be known as municipal coupon bonds of (name of city or town, county and state), and shall be issued as near as practicable in denominations of one thousand dollars each, but bonds of the denomination of five hundred dollars or one hundred dollars may be issued when necessary, each bond to be made payable within twenty years from the date of its issuance. Said bonds must bear interest at a rate not exceeding six per centum per annum, to be paid on the first day of January and first day of July in each year at the office of the city or town treasurer, or at such banking house or trust company in the city of New York, as may be designated by the mayor and common council of the city or trustees of the town, issuing such bonds, at the option of the holder thereof. Such bonds shall be redeemable at the pleasure of the city or town at any time after the expiration of ten years from the date of the issuance, and each bond must be redeemed in the order it is numbered.

1899, 5th Ses. p. 30, Sec. 3; 1895, 3d Ses. p. 71, Sec. 2, amending laws of 1891, 1st Ses. p. 54, Sec. 3.

Section 1940. Bonds; Coupons, Signatures, Etc.: The bonds mentioned in the preceding section must have attached to each bond, when negotiated, semi-annual interest coupons covering the interest expressed in the bond from the date of issue until paid. Such bonds must be signed by the mayor or chairman of the board of trustees and attested by the city or town clerk, and bear the city or town seal, and be countersigned by the city or town treasurer, and

the coupons attached to such bonds must be signed by the city or town treasurer. Each coupon must have annexed to the same a number corresponding with the number of the bond, and each bond must state upon its face the amount for which the same is issued, the date of issue, and to be made payable to or bearer, and must also recite that it is issued in conformity with the provisions of this subdivision.

1899, 5th Ses. p. 31, Sec. 4; 1895, 3d Ses. p. 72, Sec. 3, amending laws of 1891, 1st Ses. p. 55, Sec. 4.

Section 1941. Bonds; Registration and Sale: The said mayor and common council or board of trustees must give notice by publication in some newspaper published in the city or town—if in a weekly paper in four issues thereof,—if in any other paper for four weeks,—of its intention to issue and negotiate such bonds, and invite bidders therefor, and, after ascertaining the best terms upon, and the lowest interest at which such bonds can be negotiated, must secure the proper engraving or printing thereof, and thereafter must have them consecutively numbered and otherwise properly prepared and executed; and, when so executed, they must each be by the city or town clerk registered in a public record book to be kept for that purpose, and therein must be stated the number, date, amount of each bond, time and place of payment, rate of interest, number of coupons attached, and any other proper description thereof for future identification.

Then said mayor and common council or trustees must from time to time, in such amounts as they may deem best, deliver said bonds to the city or town treasurer and take and file his receipt therefor, and charge him with all bonds so delivered; and any duties required of said mayor and common council or trustees, by virtue of this subdivision, may be performed at any general, special or called meeting thereof. The city or town treasurer must, under the general supervision of said mayor and common council or trustees, sell said bonds for cash, and in no case must said bonds be sold for less than their face, or par value, and the accrued interest at time of disposal.

All proceeds derived from sale of said bonds must be applied exclusively to the purpose for which said bonds are issued. Said city or town treasurer must keep a record of all bonds disposed of, showing their number, rate of interest, date and amount of sale, and when and where payable, which record he must keep open for the inspection of the public at all reasonable office hours; and he must make detailed statements to said mayor and common council or trustees of all his transactions under the provisions of this subdivision as often as required by them.

1899, 5th Ses. p. 31, Sec. 5; 1895, 3d Ses. p. 72, Sec. 4, amending laws of 1891, 1st Ses. p. 55, Sec. 5.

SALE OF BONDS: Commissioners of a sinking fund of a city have no authority to purchase from the city for that fund, bonds of the city at the time when they are offered for sale by the

city.—*Kelly v. Minneapolis*, 63 Minn. 125, 30 L. R. A. 281, 65 N. W. 115. Even bona fide purchasers of municipal bonds are charged with notice of all the requirements of the statute under which such securities were issued.—*Peoples' Bank v. School Dist. No. 52*, 3 N. Dak. 496, 28 L. R. A. 642, 57 N. W. 787.

Section 1942. Tax Levy to Pay Interest, Etc.: The mayor and common council or trustees must, in accordance with the provisions designated to be made for the collection of an annual tax sufficient to pay the interest on such bonds as it falls due, and to create and constitute a sinking fund for the payment of the principal of said bonds as they respectively become due, cause to be levied annually upon all the taxable property within said city or town in addition to the authorized taxes, a sufficient sum to pay said interest, and must in time to provide means for the payment of said bonds as they become due, cause to be levied a sufficient additional sum to pay said bonds at maturity; and all such taxes must be levied, assessed and collected as other city or town taxes, until the bonds so issued are fully paid, including the interest thereon; the faith, credit and all taxable property within said city or town are and must continue, pledged, and the proper officers of the city or town must continue to assess and collect on all the taxable property within the limits thereof, the necessary taxes to pay said bonds and interest thereon as the same becomes due.

Should the tax for the payment of interest on any bonds issued under these provisions, at any time, not be levied or collected in time to meet such payment, the interest must be paid out of any moneys in the city or town general or expense fund, and the money so used for such payment of interest must be repaid to the fund from which so taken out of the first moneys collected from taxes.

1899, 5th Ses. p. 31, Sec. 6; 1895, 3d Ses. p. 73, Sec. 5, amending laws of 1891, 1st Ses. p. 56, Sec. 6.

Section 1943. Duties of Officers. Penalties: It shall be the duty of the city or town treasurer to use the proceeds arising from the sale of bonds in payment of the indebtedness described in said ordinance only. And it shall be the duty of the city or town officials to levy, collect and apply the tax herein provided for to the payment of interest and redemption of the principal of the bonds in the manner specified, and for no other purpose, and any failure to comply with these provisions, by the proper officers, or any neglect or refusal to levy and collect any such tax as aforesaid, shall be deemed a misdemeanor, and any city or town official guilty of the same shall, upon conviction, be fined in an amount equal to the sum that should have been levied; or for any misappropriation he shall be fined in an amount equal to the sum misappropriated, and imprisoned in the city or town jail not exceeding six months.

1899, 5th Ses. p. 32, Sec. 7; 1895, 3d Ses. p. 74, Sec. 6, amending laws of 1891, 1st Ses. p. 56, Sec. 7.

Where the charter of a city makes it the duty of the treasurer to pay the interest on certain bonds when it falls due, out of a fund provided for that

purpose, such payment is a duty especially enjoined by law upon the officer, and may be enforced by mandamus. — *Meyer v. Porter*, 65 Cal. 67, 14 L. R. A. 777, 2 Pac. 884; *Ray v. Winston*, 10 So. 613, 14 L. R. A. 773, and cases cited under notes.

Section 1944. Funding Bonds may be Issued, when: Bonds may be issued under the fourth subdivision of section 1937 for the purpose of funding, refunding, purchasing or redeeming the outstanding indebtedness of any such city or town, when the same

can be done to the profit and benefit of such city or town and without incurring any additional liability, without the submission of the question of the issuance of such bonds to the electors of the city or town.

1899, 5th Ses. p. 32, Sec. 8; 1893, 2d
Ses. p. 130, Sec. 10;

See *Bannock Co. v. Bunting* (Idaho);
37 Pac. 277.

Section 1945. Collection of Interest and Bond Tax.

Reissue: Every city whose mayor and common council, and every town whose trustees, have authorized the issue of bonds for any one or more of the purposes heretofore specified, he and the same are hereby authorizd to make provision for the collection of an annual tax sufficient to pay the interest on such bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same; and in any case where such provision has not been designated, or an insufficient provision has been designated, in the resolution of the mayor and common council of such city or of the trustees of such town as provided for in section 1938, such sufficient provision may and the same is hereby authorized to be made by such mayor and common council or such trustees by an ordinance duly passed, and such provision by such ordinance shall be deemed and held to be a full and complete compliance with all the provisions of this sub-division, and with all other laws which require such provision to be made or designated; and in case any such bonds authorized as aforesaid have by any city or town been sold for value and the purchase price thereof at not less than par has been paid to and received by such city or town, the common council or trustees thereof may by ordinance duly passed ordain and provide that upon the surrender of such bonds by the holder or holders thereof new bonds in the place thereof shall be issued and delivered to such holder or holders. Provided, That such new bonds shall not be for any greater sum or rate of interest than the bonds so surrendered, and the bonds so surrendered shall thereupon be immediately cancelled, and the new bonds thus issued in place thereof shall be the valid and binding obligations of the city or town so issuing the same.

1899, 5th Ses. p. 32, Sec. 9; 1893, 2d Ses. p. 130, Sec. 11.

Section 1946. Changing Name of City or Town.

Petition: Whenever a majority of the legal voters of any incorporated town, village or city shall present a petition to the board of county commissioners of the county in which such town, village or city is situated, praying that a special election may be called in said town, village or city for the purpose of voting on the question of changing the name of such town, village or city, and such board, or a majority of the members thereof, shall be satisfied, by affidavit or other proof, that a majority of the legal voters of such town, village or city have signed such petition, it shall be the duty of such board to forthwith give notice of the filing of such petition, by publishing such notice in a newspaper published in said town, village or city, or, if there be no newspaper published in said town,

village or city, then by publishing such notice in some other paper published in the county, or by posting said notice in three of the most public places in said town, village or city. Said notice shall contain the date when the same will be heard, which said date shall be not less than thirty days after the first meeting of the board of county commissioners after the filing of said notice, and said publication shall be made, or said notices posted, for not less than twenty days before such petition is acted upon by said board of county commissioners. At the hearing of said petition, if it shall satisfactorily appear to said board of county commissioners that said petition does contain the names, as signers thereto, of a majority of the legal voters of said town, village or city, and that the notice as herein required has been given, then it shall be the duty of said board of county commissioners to forthwith call a special election in said town, village or city for the purpose of submitting to the qualified electors thereof the question of changing the name of such town, village or city. Notice of the time and place of holding said election shall be given in the same manner and said election shall be conducted in all respects the same as is provided by law for general elections for town and village purposes. The electors at said election shall designate, on their ballots, what name they desire said town, village or city shall take, and the name receiving a two-thirds vote of all the votes cast at said election shall become and remain the name of such town, village or city.

1899, 5th Ses. p. 82, Sec. 1; 1891, 1st Ses. p. 127, Sec. 1.

Section 1947. Duty of Election Board: It shall be the duty of the election board conducting such election to certify to the board of county commissioners the tally sheets used at such election, showing the votes cast, and the number of votes cast for each name voted for at such election.

1899, 5th Ses. p. 83, Sec. 2; 1891, 1st Ses. p. 128, Sec. 2.

Section 1948. Second Election to be Called, When: In case no name has received two-thirds of all the votes cast at such election, then said board of county commissioners shall forthwith call another election in the same manner as the first, which said election shall be conducted in the same manner as the first, and the name receiving a majority of the votes cast at such second election, shall become and remain the name of such town, village or city.

1899, 5th Ses. p. 83, Sec. 3; 1891, 1st Ses. p. 128, Sec. 3.

Section 1949. Commissioners to Change Name, When: It shall be the duty of the board of county commissioners, upon receiving the tally sheets and returns of such election, as provided in sections 1946 and 1948, to enter upon their record an order changing the name of such town, village or city to the name selected by the voters of such town, village or city at such special election held as herein provided, and to make and file with the board of trustees of such town, village or city, and also with the county recorder of the

county, a certified copy of the order made by such board of county commissioners in changing the name of such town, village or city.

1899, 5th Ses. p. 83, Sec. 4; 1891, 1st Ses. p. 128, Sec. 4.

Section 1950. Cost of Election, by Whom Paid: The cost and expenses of holding such election or elections, shall be paid by the town, village or city where such election is held.

1899, 5th Ses. p. 83, Sec. 5; 1891, 1st Ses. p. 129, Sec. 5.

Section 1951. Effect of Change of Name: A change of name under the provisions of this subdivision shall not in any manner affect or alter any right of action, legal process, or property.

1899, 5th Ses. p. 84, Sec. 6; 1891, 1st Ses. p. 129, Sec. 6.

CONSOLIDATION OF CITIES, TOWNS AND VILLAGES

Section 1952. Consolidation May be Made: Whenever two cities, towns or villages organized under the laws of this state, which are adjacent to each other, desire to consolidate so as to form one city, town or village, such consolidation may be made as herein-after provided.

1899, 5th Ses. p. 359, Sec. 1.

Section 1953. Resolution of City or Village Desiring Consolidation: The mayor and council of any city, or the chairman and board of trustees of any town or village desiring such consolidation with the adjacent city, town or village may pass a resolution wherein it shall be stated that such city, town or village desires to be consolidated with the adjacent city, town or village and shall also request the city council or the board of trustees of such adjacent city, town or village to fix a time for the joint session of the city councils or board of trustees of the two cities, towns or villages to pass an ordinance consolidating the same.

1899, 5th Ses. p. 359, Sec. 2.

Section 1954. Action of City or Village Receiving Resolution: The city council or board of trustees of such city, town or village, shall, upon the receipt of such resolution, if deemed expedient, pass a resolution specifying the time and place of holding such joint session of the city councils or boards of trustees, of the two cities, towns or villages.

1899, 5th Ses. p. 359, Sec. 3.

Section 1955. Joint Meetings of Councils or Boards of Trustees: At the time specified for holding such joint session of such city councils or boards of trustees, the said councils or boards of trustees shall meet at the place specified by the resolution fixing the time and place for holding such joint session, and the mayor of the larger city or chairman of the board of trustees of the larger town or village shall be president of such session, and the clerk of such city, town or village shall be secretary thereof. In case of absence of either or both of said officers the corresponding officers of the smaller city, town or village shall act as president or secretary as the case

might be. In the absence of both mayors and chairmen or both clerks the joint session shall elect a president or secretary from the members present.

1899, 5th Ses. p. 359, Sec. 4.

Section 1956. Adjourned Meetings. Two-Thirds Vote Necessary, When: Said joint session may be adjourned from time to time until the business for which it is assembled is completed. On all preliminary questions a majority of those present and voting shall be sufficient, but on the final passage of the joint ordinance there must be two-thirds of all the councilmen or trustees elect of each city, town or village voting in the affirmative, to give such ordinance validity.

1899, 5th Ses. p. 359, Sec. 5.

Section 1957. Consolidation Ordinance; Publication of: The joint ordinance shall be signed by the mayors of both cities or chairmen of both boards of trustees as the case may be and attested by the clerks, and shall be published in some newspaper published in one of the two cities, towns or villages proposed to be consolidated for two successive weeks, prior to the time of the taking effect of the ordinance, and such ordinance shall provide some day in the future when such ordinance shall go into effect; such ordinance shall state the terms upon which the consolidation of the two cities, towns or villages shall be effected, and the said joint session shall also adopt a name by which the said consolidated city, town or village shall be known, which name shall be stated in such joint ordinance.

1899, 5th Ses. p. 359, Sec. 6.

Section 1958. Boundaries of Consolidated City or Village: Said joint ordinance shall define the boundaries of such consolidated city, town or village, and for the purpose of making such boundaries regular may include such territory adjacent to such city, town or village as receives or will receive the benefit of the incorporation of such cities, towns or villages, Provided, That no city, town or village receiving the benefits of this subdivision shall include within its corporate limits more than one-quarter section of land to each two hundred inhabitants.

1899, 5th Ses. p. 359, Sec. 7.

Section 1959. Record of Proceedings, and Ordinance: The proceedings of the joint session of the city councils or boards of trustees herein provided for, shall be copied in the journal of the proceedings of the city council or board of trustees of the larger city, town or village, and the joint ordinance shall be recorded in the ordinance book of the larger city, town or village.

1899, 5th Ses. p. 360, Sec. 8.

Section 1960. Duty of County Commissioners; Election of Officers: After the passage of such ordinance herein provided for a true copy of such ordinance shall be filed with the clerk of the board of county commissioners for the county in which such

city, town or village is situated, and such board shall, if it appears that the provisions of this subdivision have been complied with, make an order that such cities, towns and villages are duly consolidated and incorporated under the name adopted by such joint ordinance, and embracing the territory described in such ordinance, said board of county commissioners shall also provide for the first election to be held in such consolidated city, town or village, which election shall be conducted and notice thereof given in the same manner as other village elections; *Provided*, That the city council or board of trustees of the larger city, town or village shall be deemed the city council or board of trustees of the consolidated city, town or village pending such election; *Provided, further*, That if such ordinance is adopted within two months of the annual election held in the cities, towns and villages of this state, that no election need be provided for, but the city council or board of trustees of the larger city, town or village shall be deemed the officers of the consolidated city, town or village until such annual election, and the annual election shall be the first election of such consolidated city, town, or village.

1899, 5th Ses. p. 360, Sec. 13.

Section 1961. What Ordinances Govern: All ordinances, rules and regulations of the larger city, town or village shall remain in force and effect over all the territory embraced in such consolidated city, town or village.

1899, 5th Ses. p. 360, Sec. 9.

Section 1962. Custody of Records, Papers, Money, Etc.: All records, papers and documents of the smaller city, town or village in the hands of the clerk of such city, town or village, shall be turned over to the clerk of the consolidated city, town or village, and become the records of such consolidated city, town or village, and the treasurer of such smaller city, town or village shall on demand turn over all money, books, papers, or records in his hands belonging to such smaller city, town or village to the treasurer of the consolidated city, town or village.

1899, 5th Ses. p. 360, Sec. 10.

Section 1963. Claims, Debts or Demands: All the claims, debts or demands against either of the cities, towns or villages so consolidated shall be assumed and paid by the consolidated city, town or village.

1899, 5th Ses. p. 360, Sec. 11.

Held, under a similar provision, that a consolidated corporation may be compelled to set aside from its current revenue, a sufficient amount to liquidate

certain warrants that were issued against a particular fund of one of the former corporations.—*Potter v. Black*, 15 Wash. 186, 45 Pac. 787.

Section 1964. Property, Etc., Belong to Consolidation: All the property of every description, including all debts, claims and demands of every description in favor of either of the cities, towns, or villages so consolidated upon consolidation becomes the property of the consolidated city, town, or village.

1899, 5th Ses. p. 360, Sec. 12.

CHAPTER LXXIII.

CITY AND VILLAGE PLATS.

Section.

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PLATS.

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EXECUTION AND FILING OF PLATS.

Section 1965. Owner to Make and File Plat: When any owner or proprietor of any tract or parcel of land, wishes to lay out a town site or an addition to any town, village or city or subdivision of out lots, they shall cause the same to be surveyed and a plat thereof made, which shall particularly and accurately describe and set forth all the streets, alleys, commons or public grounds and all in and out lots or fractional lots within, adjoining or adjacent to said town site or addition, giving the name of streets and width, boundaries and extent of all streets and alleys and courses of certain lines sufficient to determine the course of all streets and alleys and lot lines. All lots shall be numbered by progressive numbers in each block separately; blocks shall also be numbered. The duty to file for record a plat as provided herein shall attach as a covenant of warranty in all conveyances hereafter made of any lot or lots included in said plat by the original owner or proprietor against any and all assessments, costs and damages paid, lost or incurred by any grantee or person claiming under him in consequence of the omission on the part of said owner or proprietor to file such plat.

Description of lots or parcels of land according to the number and designation on said plat in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.

1901, 6th Ses. p. 183.

Section 1966. Certificate, Donation, Recording: The correctness of said plat must be certified to by the surveyor making the survey, said certificate to contain a correct description of the land included in said plat, and the owner or owners of the land included in said plat, shall also make a certificate containing a correct description of the land with a statement as to their intentions to include the same in the plat, and must also make a deed of donation of all streets and alleys shown on said plat, with certificates and deed shall be acknowledged before some officer duly authorized to take acknowledgements of deeds, and shall be endorsed on the plat and be recorded and form a part of the record.

1901, 6th Ses. p. 184.

Section 1967. Townsite to be Staked or Otherwise Marked: In the survey of a townsite, addition to any town, village or city or subdivision of out lots, it shall be necessary to drive a stake at each and every corner of each and every lot or to mark the same in some other good and substantial manner; stakes must at least be two inches square and fourteen inches in length, and driven at least ten inches in the ground; stone monuments must be planted six inches under ground, at different points in said town site or addition and upon the limiting lines of the same, with exact points marked thereon and must not be over eight hundred feet apart, following the course of streets; said monuments must contain at least five hundred cubic inches, and the exact point where the same are located must be marked on the plat.

1901, 6th Ses. p. 184, Sec. 3.

Section 1968. Plat Must Show Location of Government Corners: When the land upon which any town site or addition is located has been surveyed by the government, the plat of said town site must show the location of at least three government corners.

1901, 6th Ses. p. 184, Sec. 4.

Section 1969. Effect of Acknowledging and Recording: The acknowledgement and recording of such plat is equivalent to a deed in fee simple of such portion of the premises platted as is on such plat set apart for streets or other public use; or as is thereon dedicated to charitable, religious, or educational purposes.

1899, 5th Ses. p. 213, Sec. 97; 1893, 2d Ses. p. 127, Sec. 93.

DEDICATION: Where a proprietor lays off any city or town, or any addition to any city or town, makes out a map or plat thereof, and reserves for public use, streets or alleys, and acknowledges, certifies, files, and records the same with the register of deeds of the county in which such city, town, or addition is situate, the fee of the streets and alleys dedicated to public use vests absolutely in the county in which such real estate lies, and the county forever after holds the property for such use.—*Hardin v. Metz* (Kan. App.), 58 Pac. 281.

DEDICATION OF PUBLIC HIGHWAY: The dedication of a street, as laid out on a town plat, which is not executed in accordance with the statute, may, as against the corporation within which the land is situate, be revoked at any time before its acceptance by the corporation or by the public, notwithstanding lots laid out on the plat have been sold, and a conveyance of the land in fee simple, by a deed of general warranty, operates, in law, as a revocation.—*Incorporated Village of Lockwood v. Smiley*, 26 Ohio, 94.

Section 1970. Streets and Alleys, How Laid Out: Streets and alleys laid out in any addition to any city or village shall be continuous with and correspond in directions and width to the streets and alleys of the city or village to which they are an addition.

1899, 5th Ses. p. 213, Sec. 98; 1893, 2d Ses. p. 127, Sec. 94.

Lands subdivided into lots and blocks, if not contiguous to the limits of a city, are not "platted" within the

meaning of the statutes relating to annexation of territory to municipalities.—*Forsyth v. Hammond*, 142 Ind. 505, 30 L. R. A. 576, 40 N. E. 267, 41 N. E. 950.

Section 1971. Failure to Record; Proceedings by County: Whenever the original owners or proprietors of any subdivision of land, as contemplated in section 1965 have sold or con-

veyed any part thereof, or invested the public with any right therein, and have failed and neglected to execute and file for record a plat as provided in section 1965, the county recorder shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of such plat as provided; and if such owners or proprietors, whether notified or not, fail and neglect to execute and file for record said plat for thirty days after the issuance of such notice, the clerk shall cause to be made the plat of such subdivision, and any surveying necessary therefor. Said plat shall be signed and acknowledged by the recorder, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and file for record; and, when so filed for record, it shall have the same effect for all purposes as if executed, acknowledged and recorded, by the owners or proprietors themselves. A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be by the recorder laid before the first session of the county board, who shall allow the same, and order the same to be paid out of the county treasury, and who shall at the same time, assess the same amount pro rata upon all several subdivisions of said tract, lot, or parcel so subdivided; and said assessment shall be collected with, and in like manner as the general taxes, and shall go to the general county fund; or said board may direct suit to be brought in the name of the county, before any court having jurisdiction, to recover of the said original owners or proprietors or either of them, said cost and expense of procuring and recording said plat.

1899, 5th Ses. p. 213, Sec. 104; 1893, 2d Ses. p. 128, Sec. 100.

Section 1972. Duty of Tax Collector to Plat, When:

Whenever any congressional subdivision of land of forty acres or less, or any lot or subdivision is owned by two or more persons in severalty, and the description of one or more of the different parts or parcels thereof, cannot, in the judgment of the county tax collector be made sufficiently certain and accurate for the purposes of assessment and taxation without noting the metes and bounds of the same, the tax collector shall cause and require to be made and recorded a plat of such tracts or lot of land with its several subdivisions in accordance with the provisions of this chapter.

1899, 5th Ses. p. 214, Sec. 105; 1893, 2d Ses. p. 128, Sec. 101.

Section 1973. Plats Heretofore Filed are Valid:

None of the provisions of this chapter shall be construed to require replatting in any case where plats have been made and recorded in pursuance of any law heretofore in force; and all plats heretofore filed for record, and not subsequently vacated, are hereby declared valid, notwithstanding, irregularities and omissions in manner of form of acknowledgment or certificate; but the provisions of this section shall not affect any action or proceeding now pending.

1899, 5th Ses. p. 214, Sec. 106; 1893, 2d Ses. p. 129, Sec. 102.

Section 1974. Penalty for Selling Before Filing Plat:

Any person who shall dispose of or offer for sale or lease any lots in

any town, or addition to any town or city, until the plat thereof has been duly acknowledged and recorded as provided in this chapter, shall forfeit and pay fifty dollars for each lot and part of a lot sold or disposed of, leased or offered for sale.

1899, 5th Ses. p. 214, Sec. 107; 1893, 2d Ses. p. 129, Sec. 103.

VACATING PLATS.

Section 1975. How Plat May be Vacated: Any plat may be vacated by the proprietors thereof at any time before the sale of any lots therein by a written instrument declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same office with the plat to be vacated; and the execution and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons and public grounds laid out or described in such plat, and in cases where any lots have been sold the plat may be vacated, as herein provided, by all the owners of lots in such plat joining in the execution of the writing aforesaid.

1899, 5th Ses. p. 213, Sec. 99; 1893, 2d Ses. p. 127, Sec. 95.

Section 1976. Part of Plat May be Vacated: Any part of a plat may be vacated under the provisions and subject to the conditions of this chapter; *Provided*, Such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat; and *Provided, further*, That nothing contained in this section shall authorize the closing or obstruction of any public highways laid out according to law.

1899, 5th Ses. p. 213, Sec. 99; 1893, 2d Ses. p. 127, Sec. 96.

Section 1977. What Part of Streets, Etc., may be Closed: When any part of a plat shall be vacated as aforesaid, the proprietors of the lots so vacated may enclose the streets, alleys and public grounds adjoining said lots in equal proportions.

1899, 5th Ses. p. 213, Sec. 101; 1893, 2d Ses. p. 127, Sec. 97.

Section 1978. Recorder to Mark Vacated Part: The county recorder in whose office the plats aforesaid are recorded, shall write in plain, legible letters, across that part of said plat so vacated, the word "vacated," and also make a reference on the same to the volume and page in which the said instrument of vacation is recorded.

1899, 5th Ses. p. 213, Sec. 102; 1893, 2d Ses. p. 127, Sec. 98.

Section 1979. Owner of Lots on Vacated Plat may Plat: The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor; and when such plat is acknowledged by such owner, and is recorded in the recorder's office of the county, such lots may be conveyed and assessed by the numbers given them on such plats.

1899, 5th Ses. p. 213, Sec. 103; 1893, 2d Ses. p. 127, Sec. 99.

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